Code in which case I can exercise my powers of revision under section 311 thereof by altering such order, as I now do, by expunging the words "amounting to an acquittal".

I therefore certify to the Ninth Magistrate's Court that its order of discharge amounting to an acquittal should be altered to one of discharge only.

Order accordingly.

Solicitors: *David Marshall; Osborne-Jones & Co.*

KARAM SINGH v. MENTERI HAL EHWAL DALAM NEGERI*, MALAYSIA

[F.C. (Azmi L.P., Ong Hock Thye C.J. (Malaya), Suffian, Gill and Ali F.JJ.) April 25, 1969]

[Kuala Lumpur — Federal Court Criminal Appeal No. X.26 of 1968]

Internal Security — Detention — Grounds of — Right to be informed of allegation of facts on which order is based — Purpose of detention — Application for habeas corpus — Legality of detention — Onus of proof — Order of detention stating 3 grounds in alternative, while grounds supplied to detainee stated only 1 — Argument that allegations of fact were vague, insufficient and irrelevant — Internal Security Act, 1960, s. 8(1) — Malaysia Constitution, art. 5(1).

Constitutional Law — Fundamental rights — Preventive detention — Legality of detention — Onus Malaysia Constitution, arts. 5, 40, 149, 151 & 162.

Criminal Law and Procedure — Habeas corpus — Person detained under Internal Security Act, 1960 — Exercise of valid legal power — Criminal Procedure Code (Cap. 6), Ch. XXXVI.

This was an appeal against the decision of the High Court dismissing an application by the appellant for a writ of *habeas corpus*. The appellant had been detained under an order of detention made by the Minister of Home Affairs which recited that "Whereas the Yang di-Pertuan Agong is satisfied with respect to the undermentioned person that, with a view to preventing that person from acting in any manner prejudicial to the security of Malaysia/maintenance of public order therein/the maintenance of essential services therein, it is necessary to make the following order:". The grounds of detention served on the appellant stated that the order was made on the ground that the appellant had acted in a manner prejudicial to the security of Malaysia; therein set out were twelve allegations of fact on which the order was based. The learned trial judge held that the order of detention was made in exercise of a valid power and that the detainee had not discharged the burden, which was on him, of showing that the order was made *mala fide* or improperly. On appeal it was argued that: (i) the learned trial judge had failed to recognise the nature and extent of the onus placed on the respondent by the Constitution to prove the legality of the detention and was wrong in holding that there was an onus on the appellant to discharge; (ii) section 8 of the Internal Security Act allows a person to be detained on four grounds, the order of detention stated three grounds in the alternative, the grounds supplied to the appellant stated only one ground, and all this showed a casual and cavalier attitude on the part of the responsible authorities indicating that they had not given the matter adequate consideration, and therefore the order of detention was invalid and the appellant's detention unlawful; (iii) the allegations of fact supplied to the appellant were vague, insufficient and irrelevant and thus hampered the appellant in the exercise of his right to make representations, consequently invalidating the original order of detention.

Held, dismissing the appeal: (1) the learned trial judge was correct in holding that the appellant's detention had been made in the exercise of a valid legal power and therefore the onus lay on the appellant to show that such power had been exercised *mala fide* or improperly;

(2) the defect (if any) in the detention order in setting out the objects and purposes of the detention in the alternative was a defect of form only and not of substance, it did not show that the executive had not adequately applied its mind to the desirability of detaining the appellant and therefore did not invalidate the order;

(3) the vagueness, insufficiency or irrelevance of the allegations of fact supplied to the appellant did not relate back to the order of detention and could not render unlawful detention under a valid order of detention; if, however, the appellant thought that the allegations were vague, insufficient or irrelevant he should have asked for particulars;

(4) the question whether there was reasonable cause to detain the appellant was a matter of opinion and policy, a decision which could only be taken by the executive.

Cases referred to:—

(1) *State of Bombay* v. *Atma Ram* A.I.R. 1951 S.C. 157.

(2) *Jagannath Misra* v. *State of Orissa* A.I.R. 1966 S.C. 1140.

(3) *Greene* v. *Secretary of State for Home Affairs* [1942] A.C. 284.

(4) *Ram Manohar* v. *State of Bihar* A.I.R. 1966 S.C. 740.

(5) *Dwarka Das* v. *State of Jammu & Kashmir* A.I.R. 1957 S.C. 164.

(6) *Shibban Lal* v. *State of U.P.* A.I.R. 1954 S.C. 179.

(7) *Lawrence Joachim Joseph D'Souza* v. *State of Bombay* [1956] S.C.R. 382.

(8) *Jhala Jorubha* v. *The State* A.I.R. 1952 Saurashtra E.C. 12, 16.

(9) *Bhim Sen* v. *State of Punjab* [1952] S.C.R. 19, 23.

(10) *Sadanandan* v. *State of Kerala* A.I.R. 1966 S.C. 1925.

(11) *The King* v. *Secretary of State for Home Affairs, Ex parte Lees* [1941] 1 K.B. 72.

(12) *Liversidge* v. *Sir John Anderson & Anor.* [1942] A.C. 206.

(13) *Eliezer Zabrovsky* v. *General Officer Commanding Palestine* [1947] A.C. 246, 255.

(14) *Dr. Ram Krishan Bhardwaj* v. *State of Delhi* A.I.R. 1953 S.C. 318.

(15) *Rameshwar Shaw* v. *District Magistrate, Burdwan & Anor.* A.I.R. 1964 S.C. 334.

(16) *Rex* v. *Halliday* [1917] A.C. 260.

(17) *Gopalan* v. *State of Madras* A.I.R. 1950 S.C. 27; [1950] S.C.R. 88.

(18) *Machindar Shivaji Mahar* v. *The King* [1949-50] F.C.R. 827, 831.

* Minister of Home Affairs.

The following cases were also cited in argument: *Kalong Ningkan* v. *Government of Malaysia* [1968] 1 M.L.J. 119 and [1968] 2 M.L.J. 238; *Lian Hock Siew & Ors.* v. *Minister of Interior and Defence* [1968] 2 M.L.J. 219.

In the court below *Dato' David Marshall* with *K.L. Devaser* and *Ranjit Singh* appeared for the applicant; and *Dato' Mohamed Salleh bin Abas* (Solicitor-General) and *Ajaib Singh* (Senior Federal Counsel) appeared for the respondent. Ibrahim J. delivered the following judgment on November 23, 1968:

Ibrahim J.: This is an application made under Chapter XXXVI of the Criminal Procedure Code (Cap. 6) and article 5(2) of the Constitution for an order that a writ of *habeas corpus* be issued to direct the respondent to produce the applicant before this court and to show cause as to why the applicant should not be set at liberty forthwith on the grounds shown in the affidavit filed in support thereof.

The applicant was detained pursuant to an order made under section 8(1)(a) of the Internal Security Act No. 18 of 1960 and as required by section 11(1) of the said Act a copy of the order was served on the applicant on 18th of May, 1967. The order is in the following terms:—

"INTERNAL SECURITY ACT 1960
ORDER OF DETENTION
Section 8(1)(a)

To:

PEGAWAI YANG MENJAGA,
TEMPAT TAHANAN PERLINDONGAN KHAS,
BATU GAJAH.

and to:

The Inspector General of Police, Royal Malaysian Police, all other police officers and all others whom it may concern.

Whereas the Yang di-Pertuan Agong is satisfied with respect to the undermentioned person that, with a view to preventing that person from acting in any manner prejudicial to the security of MALAYSIA/ the maintenance of public order therein/the maintenance of essential services therein, it is necessary to make the following order:

Now therefore, in exercise of the power conferred upon me by section 8(1)(a) of the Internal Security Act, 1960, I do hereby by this order direct that the undermentioned person forthwith be detained for a period of

TWO YEARS IN BATU GAJAH SPECIAL DETENTION CAMP or in such other place as I may from time to time direct.

Name of Detainee	N.R.I.C. NO.
SEL./7341 KARAM SINGH s/o KEHAR SINGH @ K. KARAM SINGH VERIAH	4174445

SEAL

Sgd. TUN HAJI ABDUL RAZAK B. HUSSEIN,
MENTERI HAL EHWAL DALAM NEGERI
MALAYSIA.

Dated this 17th day of May, 1967.

MHA.Y.29/93/"

Section 8(1)(a) of the said Act reads as follows:—

"8.(1) If the Yang di-Pertuan Agong is satisfied with respect to any person that, with a view to preventing that person from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of public order or essential services therein, it is necessary to do so, the Minister shall make an order —

(a) directing that such person be detained for any period not exceeding two years;"

By virtue of article 40(1) of the Constitution the Yang di-Pertuan Agong in the said section 8(1)(a) meant the Cabinet.

The applicant raises a number of grounds challenging his detention. In *Basu's* Commentary on the Constitution of India, 5th Edition, vol. 2, under the heading "Onus where imprisonment or detention is challenged" the following passage appears at page 90:—

"Where a person who has been deprived of his liberty challenges the detention by a petition for *habeas corpus*, it is for the authority who has detained him to show that the person has been detained in exercise of a valid legal power. Once that is shown, it is for the detenu to show that the power has been exercised *mala fide* or improperly."

I am satisfied that the detention of the applicant has been made in the exercise of a valid legal power. It has never been suggested that the Internal Security Act is *ultra vires* the Constitution or that the order on the face of it is not within the ambit of section 8(1)(a) of the said Act. The onus therefore lies on the applicant to show that such power had been exercised *mala fide* or improperly.

Under the heading "When is an order *mala fide*" *Basu* at page 153 of the same volume and edition of his Commentary says:—

"An order of detention is *mala fide* if it is made for a 'collateral' or 'ulterior' purpose, i.e. a purpose other than what the Legislature had in view in passing the law of preventive detention (i.e., prevention of acts prejudicial to the security of the State, maintenance of public order and so on). There is a *mala fide* exercise of the power if the grounds upon which the order is based are not proper or relevant grounds which would justify detention under the provisions of the law itself, or when it appears that the authority making the order did not apply his mind to it at all, or made it for a purpose other than that mentioned in the detention order.

The question of *mala fides* has to be decided with reference to the facts of each case and the observations in one case cannot be regarded as a precedent in dealing with other cases.

The onus of proving *mala fides* is upon the detenu, and the trend of recent decisions shows that it is not likely that the detenu may succeed in many cases."

In accordance with the requirements of article 151(1) of the Constitution section 11(2)(b) of the Internal Security Act requires that:—

"For the purpose of enabling a person to make representation under sub-section (1) he shall, within fourteen days of the service on him of the order —

(b) be furnished by the Minister with a statement in writing —

(i) of the grounds of which the order is made;

(ii) of the allegations of fact on which the order is based; and

(iii) of such other particulars, if any, as he may in the opinion of the Minister reasonably require in order to make his representation against the order to the Advisory Board."

In compliance with the requirement of the said section 11(2)(b) the applicant was on the same day that he was served with a copy of the order furnished with a written statement of the grounds and allegations of fact. The statement, a copy of which is attached to the applicant's affidavit as Exhibit marked "A1" reads as follows:—

"EXHIBIT MARKED 'A1'

Statement Required Under Section 11(2)(b) of the Internal Security Act 1960

Name of Detainee: Karam Singh s/o Kaher Singh.

Grounds on which the Order is made.

You, Karam Singh, have since 1957 consistently acted in a manner prejudicial to the security of MALAYSIA in that you, have knowingly and willingly, participated in activities which have furthered the cause of the COMMUNIST PARTY OF MALAYA (CPM) in this country. You have acted in the capacity of a pro-Communist open front worker and have taken an active part in the promotion of pro-Communist activities. You have further, during the period of Indonesian Confrontation, assisted persons whose avowed aim was to 'crush MALAYSIA' and topple the lawfully constituted Government of Malaysia by illegal and violent means.

ALLEGATIONS OF FACT

2. On 27th January, 1957, you, Karam Singh, were elected the Legal Adviser of the MALAYAN WORKERS' WELFARE SOCIETY (MWWS)). This society was successfully manipulated by Communist activities as a vehicle for furthering Communist activities in the then Federation of Malaya and had to be de-registered by Government on 19th July, 1957.

3. On 20th September, 1958, you, Karam Singh, were elected Honorary Legal Adviser to the SOCIALIST YOUTH LEAGUE (SYL) a Communist front organisation that was, since its inception on 15th March, 1956, under strong Communist control and influence. This organisation had to be banned by the Federation of Malaya Government on 1st October, 1958, owing to the grave threat it posed to the security of the nation.

4. On 13th February, 1960, at a public rally organised by the LABOUR PARTY OF MALAYA (LPM) in Kuala Lipis, Pahang, you accused the Honourable Deputy Prime Minister of having engaged foreign troops to fight the Communists and further accused him of having ordered soldiers to shoot and kill persons whom you termed as 'our warriors'. You, Karam Singh, have by this public statement shown that you openly support the armed struggle of the illegal Communist Party of Malaya (CPM).

5. On 12th February, 1960, you, Karam Singh, at the same public rally mentioned above, also called for the removal of foreign troops and the repeal of the then existing Emergency Regulations (ERgs.). These 2 points are reproductions of the demands made in the Communist Party of Malaya Manifesto of 1st September, 1957.

6. On 16th March, 1963, at a public rally at GOMBAK, SELANGOR, organised by the then existing MALAYAN PEOPLES SOCIALIST FRONT (MPSF), you, Karam Singh, condemned the arrest of a Communist front cadre under the Internal Security Act (ISA) and demanded his release. This demand is an extension of the points made by the Communist Party of Malaya Manifesto dated 1st September, 1957.

7. In April 1963, you, Karam Singh, assisted one Zainuddin Karim a leading member of an organisation known as the PUSAT PERJUANGAN KEBANGSAAN RAKYAT MALAYA, an illegal pro-Indonesian underground organisation dedicated to the violent overthrow of the Malaysian Government by providing him with funds to secretly exfiltrate to Indonesia to join forces with the anti-MALAYSIA elements there in their 'crush MALAYSIA'.

8. On 13th May, 1963, you, Karam Singh, were present at a secret meeting held at PARTAI RAKYAT Headquarters, Kuala Lumpur, to discuss the formation of pro-INDONESIA secret organisation to frustrate the formation of MALAYSIA. You advised the plotters to be cautious and offered them free legal aid in the event that they should need it.

9. On 25th May, 1963, at a public rally at BERANANG, SELANGOR, organised by the then existing Conjoined Opposition Group, you, Karam Singh, expressed anti-MALAYSIA views and claimed that the independence achieved by Malaya was not true independence. This is a repetition of Communist Party of Malaya propaganda on the subject of MALAYA'S Independence.

10. During the Federal elections of 1964 you, Karam Singh, as an Electioneering Agent for the then existing MALAYAN PEOPLES SOCIALIST FRONT, knowingly accepted an undisclosed sum of money which originated from secret Indonesian sources for Partai Rakyat election expenses.

11. On 6th March, 1967, you, Karam Singh, on your return from Cambodia, were found in possession of 2 Communist prejudicial books entitled 'Workers of all Countries Unite' and 'Vietnam Problems' (a French publication). Both these books contain Communist view points and are deemed prejudicial to the security of MALAYSIA.

12. Since March 1967, you, Karam Singh, have played a prominent and active role towards the exploitation for the Communist cause of the labour dispute in Bukit Asahan Estate, Malacca which began on 25th February, 1967. The manner in which you exploited the situation in Asahan conforms with the pattern of systematic and organised Communist United Front exploitation through agitation of legitimate labour grievances.

By Direction.
SETIA USAHA
HAL EHWAL DALAM NEGERI,
MALAYSIA."

While article 151(3) of the Constitution and section 9(b) of the Internal Security Act provide that no authority may be required "to disclose facts whose disclosure would in its opinion be against the national interest" there is no such discretion as to the disclosure of the grounds all of which must therefore be disclosed to the detainee. The affidavits of Tun Abdul Razak, the Minister of Home Affairs, dated 17th April, 1968 and Mr. D.B.W. Good, the Chairman of the Detained Persons Advisory

Board dated 12th April, 1968 show that the evidence and facts on which the Cabinet had based its decision to detain the applicant were contained in documents known as the "long allegations" and that five of the allegations of fact contained therein had in the national interest not been disclosed in A1. The "long allegations" were however made available to the Advisory Board which heard the applicant's representations.

The grounds of detention referred to in sections 9(a) and 11(2)(b) of the Internal Security Act may be distinguished from the objects of the detention specified in section 8 (1)(a) of the said Act but the satisfaction of the authority that it is necessary to make an order under the said section 8(1)(a) with a view to or with the object of preventing a person from doing a particular prejudicial act must necessarily be based on grounds essentially connected with that prejudicial act. Thus if the object of the detention is to prevent a person from acting in a manner prejudicial to the maintenance of essential services the order must be based on the grounds that he had acted in a manner prejudicial to the maintenance of certain essential services as specified in the Third Schedule to the said Act and not on the grounds that he had acted in a manner prejudicial to the security of Malaysia or to the maintenance of public order. In *State of Bombay* v. *Atma Ram* [1] at page 158 it was held that:—

"The satisfaction of the Government must be based on some grounds. There can be no satisfaction if there are no grounds for the same."

In paragraph 4 of his affidavit Tun Abdul Razak had stated that the order of detention was signed by him on the 17th of May, 1967 "as a result of the decision of the Cabinet to prevent the applicant from acting in a manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of public order or essential services therein under section 8(1) of the Internal Security Act, 1960." All the four possible objects of detention are thus recited in Tun Abdul Razak's affidavit. The order, however, recites only three of them leaving out the security of any part of Malaysia.

Although it is headed "Grounds on which the Order is made" the 1st paragraph of A1 clearly shows that there was only one ground i.e. that applicant had "since 1957 consistently acted in a manner prejudicial to the security of Malaysia" on which the Cabinet had made the order under the said section 8(1)(a) — the rest of the paragraph being merely particulars in support of that ground — and it is contended by the applicant that as both Tun Abdul Razak's affidavit and the order had cited not only the security of Malaysia but also the other objects the Cabinet had not properly applied its mind when making the order and that applicant is entitled to be released.

Jagannath Misra v. *State of Orissa* [2] was cited as authority for this contention. The detention order in that case was in the following terms:—

"Order No. 8583/C Bhubareswar, the 29th December, 1964.

Whereas the State Government is satisfied that with a view to preventing Shri Jagannath Misra, son of Biswanath Misra, village Bhandari-Sahi, P.S. Parlakemedi, District Ganjan, from acting in any manner prejudicial to the defence of India and civil defence, the public safety, the maintenance of public order, India's relations with foreign powers, the maintenance of peaceful conditions in any part of India or the efficient conduct of military operations, it is necessary so to do, the Governor of Orissa in exercise of the power conferred by R. 30(1)(b) of the Defence of India Rules, 1962, is pleased to direct that the said Shri Jagannath Misra shall be detaintd until further orders.

By order of the Governor,
Sd. Secretary to Government."

In the affidavit filed by the Minister concerned however he stated that he was only personally satisfied that it was necessary to detain the petitioner under the Rules with a view to prevent him from acting in a manner prejudicial to the safety of India and the maintenance of public order. Section 3(2)(15) of the Defence of India Act (1962) prescribed eight possible prejudicial acts on which a person may be detained. Thus while the prejudicial acts mentioned in the order were six out of a possible eight in number the Minister when speaking of his satisfaction had mentioned only two. It was held that in the circumstances of the case "the authority did not apply its mind properly before the order of detention in question was passed and that therefore the petitioner was entitled to release."

Paragraph 4 of Tun Abdul Razak's affidavit, the order and A1 must be looked at as a whole. The words in Tun Abdul Razak's affidavit which I underlined are word for word reproduced from the said section 8(1)(a) and it is clear that all that Tun Abdul Razak's affidavit could mean is that the Cabinet on the only ground and allegations of fact before it was satisfied that it was necessary to detain the applicant under the said section 8(1)(a) with a view to preventing him from acting in a manner prejudicial to the security of Malaysia only. The body of the order was in printed form with strokes used to separate the three objects of detention and it is obvious that the two other objects had inadvertently not been struck out. Had the Cabinet decided to detain the applicant with a view to or with the object of preventing him from doing all the four prejudicial acts it would be reasonable to expect that the order

would have not been made on the printed form which contains only three of the four possible objects of detention. The facts in this application therefore can be distinguished from those in *Jagannath's* case and I am not prepared to accept the contention that the Cabinet had not properly applied its mind before making the order to detain the applicant. I consider that the error made was merely in form and not in substance. The order is not a criminal charge and there is no question of its being bad because of duplicity.

Furthermore the applicant had not been prejudiced by the error and his detention therefore cannot be rendered invalid thereby. The applicant knew that the Cabinet had ordered his detention under section 8(1)(a) with a view to preventing him from acting in a manner prejudicial to the security of Malaysia only for he has throughout his affidavit contended that even if the allegations against him were true they would not constitute a danger to the present or future security of Malaysia. The issue of whether the error had prejudiced the petitioner or not was not considered in *Jagannath's* case.

In *Greene* v. *Secretary of State for Home Affairs* [3] the Home Secretary acting under regulation 18B, paragraph (1), of the Defence (General) Regulations, 1939, made an order for the detention of the appellant, stating therein that he did so because he had reasonable cause to believe the appellant to be a person of hostile associations and that by reason thereof it was necessary to exercise control over him. A copy of the order was served on the appellant but he was incorrectly informed by the advisory committee to whom he made objections against the order under paragraph (3) of regulation 18B that the ground on which he had been detained was that he had been "recently concerned in acts prejudicial to the public safety and the defence of the realm, and in the preparation of such acts." It was held that:—

> "A mistake on the part of the advisory committee, to whom the appellant made objection against the detention order under paragraph (3) of regulation 18B, in failing to give the appellant, pursuant to paragraph (5) of the regulation, the correct reasons for his detention, did not invalidate the order for detention."

At page 296 Viscount Maugham said:—

> "I agree with all the judges who have considered this case that the appellant has not shown that he was prejudiced by the error in the document sent to him by the advisory committee. I also agree with their view that a mistake in that document could not in any event invalidate the original detention or render its continuance invalid.
>
> For these reasons I think the appeal fails and should be dismissed."

Another case cited was *Ram Manohar* v. *State of Bihar*. [4] In that case the petitioner was detained under rule 30(1)(b) of the Defence of India Rules (1962). The order stated that the detention was necessary in order to prevent the petitioner from acting "in any manner prejudicial to the public safety and the maintenance of law and order". The said rule did not mention maintenance of law and order but mentioned maintenance of public order and it was held that because the words "law and order" had been used in the order instead of "public order" the detention was illegal. Sarkar J. in the judgment at page 746 said:—

> "If a man can be deprived of his liberty under a rule by the simple process of the making of a certain order, he can only be so deprived if the order is in terms of the rule. Strict compliance with the letter of the rule is the essence of the matter. We are dealing with a statute which drastically interferes with the personal liberty of people, we are dealing with an order behind the face of which a court is prevented from going. I am not complaining of that. Circumstances may make it necessary. But it would be legitimate to require in such cases strict observance of the rules. If there is any doubt whether the rules have been strictly observed, that doubt must be resolved in favour of the detenu."

Again the facts in that case are different from those in this application. Whatever other prejudicial acts the order in this application may contain it cannot be said that the detention of the applicant with a view to preventing him from acting in a manner prejudicial to the security of Malaysia is not within the terms of the said section 8(1)(a).

Allegations of fact in paragraphs 2 and 3 of A1 refer to the applicant's appointment as legal adviser to two organisations which were subsequently banned by the Government and would therefore appear to be improper or irrelevant basis for the applicant's detention and it is contended by the applicant that the whole order is bad notwithstanding that the other allegations of fact may be proper or relevant.

In *Dwarka Das* v. *State of Jammu & Kashmir* [5] an order of detention under section 3(1) of the J. & K. Preventive Detention Act, 2011 was made against the petitioner "with a view to preventing him from acting in a manner prejudicial to the maintenance of supplies and services essential to the community". The order was based on the ground that the petitioner was engaged in unlawful smuggling activities relating to three commodities cloth, zari and mercury of which the first two were found not to be essential articles. As there was no material before the court to show that the smuggling attributed to the petitioner was substantially only of mercury, and that the smuggling as regards the other two commodities was of an unconsequential nature, it was held that the order of detention was bad and must be quashed.

Jagannadhadas J. at page 168 said:—

"The principle underlying all these decisions is this. Where power is vested in a statutory authority to deprive the liberty of a subject on its subjective satisfaction with reference to special matters, if that satisfaction is stated to be based on a number of grounds or for a variety of reasons, all taken together, and if some out of them are found to be non-existent or irrelevant the very exercise of that power is bad. That is so because the matter being one for subjective satisfaction, it must be properly based on all the reasons on which it purports to be based. If some out of them are found to be non-existent or irrelevant, the court cannot predicate what the subjective satisfaction of the said authority would have been on the exclusion of those grounds or reasons. To uphold the validity of such an order in spite of the invalidity of some of the reasons or grounds would be to substitute the objective standards of the court for the subjective satisfaction of the statutory authority."

He went on to say:—

"In applying these principles, however, the court must be satisfied that the vague or irrelevant grounds are such as, if excluded, might reasonably have affected the subjective satisfaction of the appropriate authority. It is not merely because some ground or reason of a comparatively unessential nature is defective that such an order based on subjective satisfaction can be held to be invalid. The court while anxious to safeguard the personal liberty of the individual will not lightly interfere with such orders. It is in the light of these principles that the validity of the impugned order has to be judged."

In this application allegations of fact in paragraphs 2 and 3 of A1 are only two out of eleven allegations communicated to the applicant. There were also five other allegations which were not disclosed in A1 but were before the Cabinet. In the circumstances of this application I am not satisfied that those two allegations are such as, if excluded, might reasonably have affected the subjective satisfaction of the Cabinet.

In any event Mr. Khairuddin bin Ibrahim Ali, the Assistant Secretary in the Ministry of Home Affairs who prepared A1 on behalf of the Minister had said in his affidavit that the two allegations of fact were badly written by him because they did not represent what they actually meant. What was actually meant was that the participation and involvement of the applicant in those organisations were not merely as legal adviser but extended to taking part in the activities of the organisations which led to those organisations having been banned by the Government. It can be easily inferred from the affidavits of Tun Abdul Razak and Mr. Good that the "long allegations" on which the Cabinet's decision was based contained all the information referred to by Mr. Khairuddin bin Ibrahim Ali in respect of those two allegations of fact. It cannot therefore be said that insofar as the Cabinet's satisfaction is concerned it had not before it proper or relevant allegations of fact.

Mr. Good in his affidavit said that the board explained to the applicant that those two allegations were not put forward as grounds of detention because he was the legal adviser to those organisations he was believed to have been involved in their actvities which led to their being banned. The board did not treat the allegations as if they were charges in criminal prosecution and what they did was to expand and explain them in the light of the additional information contained in the "long allegations" which was available to the board. The applicant therefore cannot say that he was not in a position to make effective representation of his case to the board.

I therefore hold that the two allegations had not rendered invalid the order of detention.

It is contended by the applicant that the allegations of fact in paragraphs 8 and 11 in A1 are criminal in character which should have been proceeded with by criminal action and their inclusion in A1 shows the lack of good faith on the part of the Cabinet in making the order.

I cannot accept this contention. Detention orders are made on evidence which may not strictly be admissible or sufficient to secure a conviction in a court of law but which the law taking into consideration the needs and exigencies of administration has allowed to be considered sufficient for the subjective decision of the authority. The mere fact that those two allegations are criminal in character therefore is not evidence of the lack of good faith on the part of the Cabinet in making the order.

The applicant in his affidavit had denied all the allegations made against him in A1.

In *Greene* v. *Secretary of State for Home Affairs* [3] Viscount Maugham at page 295 cited with approval the judgment of Goddard L.J. in the Court of Appeal [1942] 1 K.B. 87, 116:—

"I am of opinion that where on the return an order or warrant which is valid on its face is produced it is for the prisoner to prove the facts necessary to controvert it, and in the present case this has not been done. I do not say that in no case is it necessary for the Secretary of State to file an affidavit. It must depend on the ground on which the return is controverted, but where all that the prisoner says in effect is 'I do not know why I am interned. I deny that I have done anything wrong' that does not require an answer because it in no way shows that the Secretary of State had not reasonable cause to believe, or did not believe, otherwise."

Mere denial by the applicant of the allegations of fact is therefore not sufficient to disprove the satisfaction or the existence of that state of mind which led to the making of the order by the Cabinet.

It is also contended by the applicant that even if all the allegations were true they would

not constitute a danger to the present or future security of Malaysia particularly because most of the allegations were ancient history and allegations in paragraphs 4, 5, 6 and 9 were mere expressions of opinion which he made during the period when he was a Member of Parliament and Assemblyman of the State of Selangor.

The eleven allegations of fact stretched in point of time from 1957 throughout the years to March, 1967. The order had been based on the alleged accumulated activities of the applicant and the satisfaction of the Cabinet being subjective it is not open to the court to examine the sufficiency of the allegations merely on the ground that some of them had happened a number of years before the order was made. When considering the question as to whether a person should be detained it is evident that the authority would have to rely on the evidence of the past conduct or antecedent history of that person.

Allegations of fact in paragraphs 4, 5, 6 and 9 have not merely alleged that the applicant had expressed his opinion but have also alleged that those statements had been made to further the cause of the Communist Party of Malaya in this country. Allegations of fact in paragraph 4 for instance has alleged that he had made the statement to openly support the armed struggle of the illegal Communist Party of Malaya. As they deal with matters within the province of national policy in relation to the security of the nation the subjective satisfaction of the Cabinet on those allegations cannot be substituted by an objective test in a court of law.

In *State of Bombay* v. *Atma Ram* [1] which deals with the detention order made under section 3 of the Indian Preventive Detention Act, Kania C.J. said at page 160:—

> "There may be a divergence of opinion as to whether certain grounds are sufficient to bring about the satisfaction required by the section. One person may think one way, another the other way. If, therefore, the grounds on which it is stated that the Central Government or the State Government was satisfied are such as a rational human being can consider connected in some manner with the objects which were to be prevented from being attained, the question of satisfaction except on the ground of *mala fides* cannot be challenged in a court. Whether in a particular case the grounds are sufficient or not, according to the opinion of any person or body other than the Central Government or the State Government, is ruled out by the wording of the section. It is not for the court to sit in the place of the Central Government or the State Government and try to determine if it would have come to the same conclusion as the Central Government or the State Government. As has been generally observed, this is a matter for the subjective decision of the Government and that cannot be substituted by an objective test in a court of law."

Another contention made by the applicant is that all the allegations are vague and therefore insufficient not only for the Cabinet to be satisfied in the making of the order but also for the applicant to make effective representations.

While the court may not review the allegations from the point of view of their vagueness as to the satisfaction of the authority in detaining an individual the court may review those same allegations as communicated to the detainee to determine whether they are too vague to enable him to make effective representation against his detention. The test to be applied is different for the two purposes. For the first the test is whether it is sufficient to satisfy the authority; for the second the test is whether it is sufficient to enable the detained person to make an effective representation. Article 151(1) of our Constitution is equivalent to article 22(5) of the Indian Constitution and in *Shibban Lal* v. *State of U.P.* [6] B.K. Mukherjea J. at page 190 said:—

> "It is true that the sufficiency of the particulars conveyed to a detenu in accordance with the provision embodied in article 22(5) of the Constitution is a justiciable issue, the test being whether they are sufficient to enable the detenu to make an effective representation."

On what is a vague ground Kania C.J. in *State of Bombay* v. *Atma Ram* [1] at page 164 observed:—

> "What is meant by vague? Vague can be considered as the antonym of 'definite'. If the ground which is supplied is incapable of being understood or defined with sufficient certainty it can be called vague. It is not possible to state affirmatively more on the question of what is vague. It must vary according to the circumstances of each case. It is, however, improper to contend that a ground is necessarily vague if the only answer of the detained person can be to deny it. That is a matter of detail which has to be examined in the light of the circumstances of each case. If on reading the ground furnished it is capable of being intelligently understood and is sufficiently definite to furnish materials to enable the detained person to make a representation against the order of detention it cannot be called vague. The only argument which could be urged is that the language used in specifying the ground is so general that it does not permit the detained person to legitimately meet the charge against him because the only answer which he can make, is to say that he did not act, as generally suggested. In certain cases that argument may support the contention that having regard to the general language used in the ground he has not been given the earliest opportunity to make a representation against the order of detention. It cannot be disputed that the representation mentioned in the second part of article 22(5) must be one which on being considered may give relief to the detained person."

Thus if the allegations furnished are capable of being intelligently understood and are sufficiently definite to enable the detainee to make a representation against the order of detention they cannot be called vague. Whether an allegation is vague or not depends on the circumstances of each case.

The applicant has denied all the allegations and has appeared before the advisory board. It cannot therefore be seriously said that he has not understood or been misled by those allegations or that those allegations are not sufficiently definite to enable him to make effective representations against the order. Even the allegations in paragraphs 4, 5, 6 and 9 contain particulars sufficient in my view to enable the applicant to make effective representations before the advisory board. The dates on and places at and the purposes for which the alleged statements were made are given in those allegations. More particulars would no doubt be useful but it would be sufficient for the respondent to say that more particulars had not been given because of the national interest. With regard to allegations in paragraphs 2 and 3 as I have said earlier those two allegations would not reasonably have affected the subjective satisfaction of the Cabinet and in any event the advisory board had explained to the applicant what they really were meant to be when he made his representations before the board. I may add here that though those two allegations as they stand may appear to be irrelevant for the subjective satisfaction of the Cabinet they cannot be said to be so vague as not to enable the applicant to make effective representations against his detention. There are sufficient and definite particulars in those allegations to show that applicant was associated with the two organisations and why those two organisations were banned by the Government. It would not therefore be difficult for the applicant to intelligently understand that those allegations had not been made against him merely because he was associated with those organisations as their legal adviser. It must necessarily be more than that and if he really considered that there were insufficient particulars in those two allegations he could have asked for more. The applicant had not asked for more particulars in respect of any of the allegations and in *Lawrence Joachim Joseph D'Souza* v. *State of Bombay* [7] Jagannadhadas J. at page 390 said:—

"The fact that he had made no such application for particulars is, therefore, a circumstance which may well be taken into consideration, in deciding whether the grounds can be considered to be vague. In the circumstances and having regard to the fact that words alleged is espionage activity at a time when relations between the two Governments on the affairs of Goa were somewhat delicate, we are inclined to think, with the High Court, that the grounds cannot be considered to be vague."

In the circumstances of this application and having regard to the fact that the allegations made against the applicant are connected with the national security I do not consider that the allegations of fact are vague and insufficient to enable the applicant to make effective representations against the order.

I therefore dismiss this application.

The applicant appealed against the above decision to the Federal Court.

FEDERAL COURT.

Dato' David Marshall (*K.L. Devaser* and *Ranjit Singh* with him) for the appellant.

Dato' Mohamed Salleh bin Abas (Solicitor-General) for the respondent.

Cur. Adv. Vult.

Azmi L.P.: This is an appeal against the decision of Ibrahim J. who dismissed the appellant's application for a writ of *habeas corpus*. The facts may be briefly summarised as follows:—

The appellant was ordered to be detained for a period of 2 years under section 8(1)(a) of the Internal Security Act, 1960, hereinafter referred to as the Act. [His Lordship then quoted the order of detention as appears at p. 130 *ante* and continued].

The Act was enacted pursuant to article 149 of the Federal Constitution hereinafter referred to as the Constitution and came into force on 1st August, 1960.

Article 149 clause (1) of the Constitution reads as follows:—

"149.(1) If an Act of Parliament recites that action has been taken or threatened by any substantial body of persons, whether inside or outside the Federation —

(a) to cause, or to cause a substantial number of citizens to fear, organised violence against persons or property; or

(b) to excite disaffection against the Yang di-Pertuan Agong or any Government in the Federation; or

(c) to promote feelings of ill-will and hostility between different races or other classes of the population likely to cause violence; or

(d) to procure the alteration, otherwise than by lawful means, of anything by law established; or

(e) which is prejudicial to the security of the Fedetion or any part thereof,

any provision of that law designed to stop or prevent that action is valid notwithstanding that it is inconsistent with any of the provisions of article 5, 9 or 10, or would apart from this article be outside the legislative power of Parliament; and article 79 shall not apply to a Bill for such an Act or any amendment to such a Bill."

Article 151(1) reads as follows:—

"Where any law or ordinance made or promulgated in pursuance of this Part provides for preventive detention —

(a) the authority on whose order any person is detained under that law or ordinance shall, as soon as may be, inform him of the grounds for his detention and, subject to clause (3), the allegations of fact on which the order is based, and shall give him

the opportunity of making representations against the order as soon as may be;

(b) no citizen shall be detained under that law or ordinance for a period exceeding three months unless an advisory board constituted as mentioned in clause (2) has considered any representations made by him under paragraph (a) and made recommendations thereon to the Yang di-Pertuan Agong."

Clause (3) of article 151 gives the discretion to any authority not to disclose facts, the disclosure of which it considers would be against the national interest.

Section 8 of the Act provides that if the Yang di-Pertuan Agong is satisfied with respect to any person that, with a view to preventing that person from acting in any manner prejudicial to the security of Malaysia or to any part thereof or to the maintenance of public order or essential services therein, it is necessary to do so, the Minister shall make an order:—

(a) directing that such person be detained for any period not exceeding 2 years or

(b) (*not relevant*).

Section 9 provides that when any person is detained under any order made under paragraph (a) of section 8(1) he shall, in accordance with article 151 of the Constitution, as soon as may be —

(a) be informed of the grounds of his detention,

(b) subject to clause (3) of the said article (which provides that no authority may be required to disclose facts which disclosure would in its opinion be against the national interest) be informed of the allegations of fact on which the order is based, and

(c) be given an opportunity of making representations against the order as soon as may be.

Section 11(1) provides that a copy of every order made by the Minister under paragraph (a) of section 8(1) shall as soon as may be after making thereof be served upon the person to whom it relates and such person shall be entitled to make representations against the order to an advisory board. Sub-section (2) of the said section provides that the person so detained shall within 14 days of the service on him of the order —

(a) be informed of his right to make representations to the advisory board under subsection (1);

(b) be furnished by the Minister with a statement in writing —

(i) of the grounds on which the order is made;

(ii) of the allegations of fact on which the order is based; and

(iii) of such other particulars if any, as he may in the opinion of the Minister reasonably require in order to make his representations against the order to the advisory board.

In this case the order of detention signed by the Minister set out in the alternative the objects or purposes for the detention of the appellant namely:—

(i) to prevent him from acting in a manner prejudicial to the security of the State, or

(ii) to prevent him from acting in a manner prejudicial to the maintenance of public order, or

(iii) to prevent him from acting in a manner prejudicial to the maintenance of essential services.

As required by section 11, the detainee was furnished by the Minister with a statement in writing of the grounds on which the order was made and of the allegations of fact on which the order was based. [His Lordship then quoted the statement of the grounds and allegations of fact as appear at p. 131 *ante* and continued].

It would be noticed that the grounds served on the appellant in order to enable him to make his representations to the advisory board set out that he had been since 1957 consistently acting in a manner prejudicial to the security of Malaysia.

The allegations of fact supplied to him together with the grounds of detention consists of eleven paragraphs and numbered serially paragraph (2) to paragraph (12). The Minister's affidavit and also that of Mr. D.B.W. Good, the chairman of the advisory board which heard the appellant's representations, pointed out that there were five other allegations of fact which were considered by the Cabinet and the advisory board but were withheld from the appellant under clause (3) of article 151 of the Constitution.

Apparently his representations before the board proved abortive.

He then applied to the High Court at Kuala Lumpur for an order of *habeas corpus* and for this purpose denied:—

(a) that he has since 1957 consistently acted in a manner prejudicial to the security of Malaya,

(b) that he has knowingly and actively participated in activities which have furthered the cause of the Communist Party of Malaya in this country,

(c) that he had acted in a capacity of a pro-Communist open front worker,

(d) that he has taken an active part in the prosecution of pro-Communist activities,

(e) that he has during the period of Indonesian confrontation assisted persons whose avowed aim was to crush Malaysia and topple the lawfully constituted government of Malaysia by illegal and violent means.

He also maintained that he was never a member of the said Communist Party nor has he ever consciously done or refrained from doing anything with a view to furthering the Communist cause.

He also denied seriatim all the allegations of fact Nos. 2 - 11 in the allegations of fact served on him under section 11 of the Act.

In paragraph 20 of his affidavit he sets out his grounds of objection which read as follows:—

"(a) The grounds of detention refer to past events, namely, 'having participated' 'having taken an active part' and 'having assisted.' Nowhere is there any suggestion that the said grounds or the allegation of fact numbered 7 are necessary for the present or future security of Malaysia.

(b) Nowhere is it suggested that I am a Communist or a Communist supporter.

(c) Allegations of fact Nos. 2, 3 and 12 are in connection with the professional duties of a counsel. A legal adviser cannot be condemned for his client's alleged crimes. These allegations ignore the basic principle of the constitutional right that every one, no matter how heinous his crimes, is entitled to legal advice and representation.

(d) Allegations of fact numbered 4, 5, 6 and 9 are expressions of opinion and do not constitute a threat to the present or future security of Malaysia.

(e) The grounds of detention and allegations of fact are vague and contain inadequate particularisation of details.

(f) The grounds of detention and allegations of fact are not made in good faith:

(i) Allegation of fact numbered 8 is an allegation of criminal character, if true, should have been proceeded with under the criminal law of the country.

(ii) Allegation of fact number 11, if true, should have been a matter of criminal action and not detention.

(iii) All the grounds refer to past events.

(g) Even if the said averments in the grounds of detention and/or allegations of fact were true, which is denied, there is no or no adequate grounds that my freedom would constitute a danger to the present or future security of Malaysia."

I will first deal with the question of burden of proof. In my view, the passage from *Basu* cited by the learned judge correctly expresses the law as to burden of proof, namely, that it is for the authority who has detained the detainee to show that the latter has been detained in exercise of a valid power. Once that is shown it is for the detainee to show that the power has been exercised *mala fide* or improperly, which means that it is made for a "collateral" or "ulterior" purpose i.e. a purpose other than those set out in article 151, and in this case for a purpose other than for preventing the detainee from doing acts prejudicial to the security of Malaysia.

The learned judge was of the view that the order of detention was made in exercise of a valid power and therefore the burden was shifted to the detainee to show that it was made *mala fide* or improperly.

He was, however, wrong when he said that it was never suggested by the appellant that the order was on the face of it not within the ambit of section 8(1)(a) of the Internal Security Act.

Dato' Marshall in his argument before us cited several Indian Supreme Court cases in support of his argument that the order of detention in this case is either illegal or made *male fide*.

I see that the appellant's affidavit in paragraph 20(f) sets out the grounds upon which it is alleged that the grounds of detention and allegations of fact are not made in good faith, namely:—

(1) allegation of fact No. 8 is an allegation of a criminal character, and if true, should have been proceeded with under the criminal law of the country.

(2) allegation of fact No. 4, if true, should have been a matter of criminal action and not detention.

(3) all the grounds refer to past events.

In India it has been held in *Jhala Jorubha* v. *The State* [8] that whether a person should be prosecuted under the ordinary law or the Government should exercise their powers under the Preventive Detention Act is for the authorities to decide. At page 14 of the report Shah C.J. in his judgment says this:—

"The authorities have laid down that the powers of the detaining authority are very wide under the law as it exists to-day. Government may detain a person even though the grounds clearly disclose that he could have been prosecuted under the ordinary criminal law with regard to those very grounds. The detaining authority may, as I pointed out earlier, detain a person although a criminal court has acquitted him of the very charge for which he is being detained under the Security Act. Therefore, in our opinion, when the detaining authority makes up his mind to detain a person who is alleged to have committed an offence, then the detaining authority has made his choice and it could not be permissible to him to investigate the offence while still keeping the person under detention and not complying with the provisions of the law with regard to investiga-

tion. Of course, it would be open to the detaining authorities to carry on an investigation into the offence provided they submit to the provisions of the law in this respect."

In my view therefore, the failure in this case of the Minister to proceed against the appellant under the criminal law of the country is no indication that he has acted in bad faith.

As to the complaint in (3) above that all grounds referred to past events and therefore showed *mala fides*, I have come across an Indian case on that point, namely *Bhim Sen* v. *State of Punjab* [9] where Kania C.J. says:—

"In our opinion the High Court approached the matter quite correctly. Instances of past activities are relevant to be considered in giving rise to the subjective mental conviction of the district magistrate that the appellants were likely to indulge in objectional activities. The grounds which were given for the detention are relevant and the question whether they are sufficient or not is not for the decision of the court."

In the above case, the order of detention was made to prevent blackmarketing and the grounds for the detention referred only to the past activities of the person detained.

Before us it was argued that the order of detention gave several objects or purposes for the detention of the appellant and they were given in the alternative, and therefore the order was illegal. Several Indian cases were cited in support of that contention namely: *Dwarka Das* v. *State of Jammu & Kashmir*,[5] *Ram Manohar* v. *State of Bihar*,[4] *Jagannath Misra* v. *State of Orissa*,[2] and *Sadanandan* v. *State of Kerala*.[10]

In *Dwarka Das'* case the order disclosed that the petitioner was detained for the purpose of preventing him from acting in a manner "prejudicial to the maintenance of supplies and services essential to the community." The ground of detention given to the detainee alleged that he was engaged in smuggling of zari, cloth and mercury. It turned out that zaris and cloth were not essential goods. The Supreme Court held that since zari and cloth were not essential goods and only mercury was, the order of detention was invalid.

The principle underlying this decision is that where power is vested in a statutory authority to deprive the liberty of a subject on its subjective satisfaction with reference to the specified matters, and if that satisfaction is stated to be based on a number of grounds or for a variety of reasons all taken together, and if some out of them are found to be non-existent or irrelevant, the very exercise of that power is bad.

In *Ram Manohar's* case, the order of detention was made by the district magistrate and he stated in the order that the detainee was detained "with a view to preventing him from acting in any manner prejudicial to the public safety and the maintenance of law and order," in place of the words given in the rule namely "with a view to preventing him from acting in any manner prejudicial to the maintenance of public order."

The majority of the court held that it being more than doubtful whether "law and order" meant the same as "public order", the only course open to the court was to hold that the rules had not been strictly observed and that the order did not justify the detention. The grounds given for that decision may be summarized as follows:—

"That where a man can be deprived of his liberty under a rule by the simple process of the making of a simple order he can only be so deprived if the order is in terms of the rule. Strict compliance with the letter of the rule is the essence of the matter and the courts are prevented from going behind the order based under the rules. The court being unable to enquire whether grounds existed which would have created the subjective satisfaction of the authority on which alone the order could have been made in the mind of a reasonable person, the courts are only entitled to look at the face of the order. On the same reasoning when an order is on the face of it not in terms of the rule, the court cannot equally enter into an investigation whether the order of detention was in fact, that is to say, irrespective of what is stated in it, in terms of the rule. In other words, in a case where the order is made to prevent 'acts prejudicial to the maintenance of law and order' the State cannot be heard to say or prove that the order was in fact made to prevent 'acts prejudicial to public order' which would bring it within the rule. Extraneous evidence is not admissible to prove that the rule has been complied with though the order of detention does not on its face show that."

The minority view as expressed by R. Dayal J. is to this effect:—

"The detaining authority is free to establish that any defect in a detention order is of form only and and not of substance, it being satisfied of the necessity to detain the person for a purpose mentioned in the rule though the purpose has been inaccurately stated in the detention order. The existence of the satisfaction required by the rule does not depend on what is said in the detention order and can be established by the district magistrate by his affidavit."

In *Jagannath Misra* v. *State of Orissa*,[2] the order of detention sets out six objects or purposes for the detention of the detainee and in the alternative. The affidavit of the Home Minister pointed out, however, that the petitioner was detained "with a view to preventing him from acting in a manner prejudicial to the safety of India and the maintenance of public order etc." The court held the view that such discrepancy between the grounds mentioned in the order and the grounds stated in the authority concerned can only show an amount of casualness in passing the order of detention and that this casualness also shows that the mind of the authority concerned was really not applied to the question of the detention of the petitioner in that case.

In England in *The King* v. *Secretary of State for Home Affairs; ex parte Lees,*[11] a part of the order of detention reads as follows:—

"Whereas I have reasonable cause to believe Aubrey Trevor Oswald Lees to have been or to be a member of, or to have been or to be active in the furtherance of the objects of an organisation. . . ."

Humphreys J. delivering the judgment of the Divisional Court says this:—

"The order therefore, follows strictly the language of the regulation. It is argued that the order is bad for duplicity in that the two allegations of membership of and activity in connection with the objects of the organisation are stated in the alternative. It is said that they afford separate grounds for the making of an order and that one or other or both of those grounds of belief should appear as the reason for making the order. In our opinion there is nothing in the point. The document in question is not a conviction nor an indictment nor even a charge. Grammatically, it may be perfectly correct to say that the Home Secretary had reasonable cause to believe that the applicant was either a member of or was active in the furtherance of the objects of the association so as to justify the making of the order. It might with equal force, be urged that the words 'to have been or to be' render the order bad upon the face of it.

We find nothing in the statute or the regulations requiring that the order should be in any particular form and, in our judgment, the order is not invalid upon this ground."

In my view, I am inclined to agree, with respect, with the line of reasoning expressed by Dayal J. in the *Ram Manohar* [4] case, that the defect in the detention order in setting out the objects or purposes for the detention in the alternative is a defect of form only and not of substance. In my opinion, therefore, the order of detention in this case should not be set aside merely because it sets out the purposes in the alternative, nor would I say that this defect is an indication that the authority was cavalier or casual in the making of the order. We know as a fact that the question whether the appellant should be detained or not was made by the Cabinet after considering all the facts and evidence against the detainee. The appeal therefore fails on this ground.

It was also urged before us that grounds 2 and 3 of the allegations of fact were irrelevant and this court would not know to what extent an absence of these irrelevant grounds would have affected the subjective satisfaction of the Cabinet. In my view, these grounds are relevant as instances of past activities of the detainee and are relevant to be considered for the subjective satisfaction of the detaining authority.

As to the arguments that the allegations of fact supplied were vague, insufficient and irrelevant, that they prevented the appellant from availing himself of the opportunity of making the representations and so on, I agree with what my learned brother Suffian F.J. states in his judgment (at pp. 148 *et seq. post*) and I have nothing to add.

Finally I wish to quote the following from the judgment of Lord Macmillan in *Liversidge* v. *Sir John Anderson & Anor.*[12] at page 253:—

"But how could a court of law deal with the question whether there was a reasonable cause to believe that it was necessary to exercise control over the person proposed to be detained, which is a matter of opinion and policy, not of fault? A decision on this question can manifestly be taken only by one who has both knowledge and responsibility which no court can share."

Again further down at page 254:—

"The question is one of preventive detention justified by reasonable probability, not of criminal conviction which can only be justified by legal evidence."

In my view therefore, this appeal must fail.

Ong Hock Thye C.J. (Malaya): Having had the opportunity of reading the extensive judgment of Suffian F.J., I am spared the burden of repeating a statement of the facts and the issues raised in this appeal. Without further preamble, therefore, I shall turn shortly to the conclusions which I have formed after a critical analysis of the arguments addressed to this court.

For the appellant it has been impressed on us by learned counsel that Karam Singh, the man, is but a mere pebble cast upon still waters, yet the ripples which it spreads affect a great number of people far and wide. I agree that this is true. Nevertheless, as demonstrated by the diversity of Indian cases cited to us, I would emphasise that the decision herein must, in the first place, be viewed in the light of the facts peculiar to this case and not construed as authority for any proposition wider than is intended.

That, in the interests of national safety, personal inconvenience in individual cases must give way is explicitly recognised by the framers of the Constitution in Part XI, articles 149 to 151. As Lord Wright said in *Eliezer Zabrovsky* v. *General Officer Commanding Palestine*:— [13]

"In the troublous times of war and in the chaotic post-war conditions the scope of legal and permissive interference with personal liberty has been extended and restraints have been legalized by the legislature which would not have been accepted as legitimate in normal times."

The twelve-year Emergency ended in 1960 but not the risks of subversion and turmoil. Hence preventive detention under regulation 17 of the Emergency Regulations, 1948, came to be embodied in the Internal Security Act, 1960, with the repeal of the Regulations. Pursuant to article 149 the Act was passed to provide for the internal security of the Federation, preventive detention, the prevention of subversion, the prevention of organised violence against persons and property and for matters incidental thereto.

By article 151 detailed and precise restrictions are laid down on preventive detention which have been scrupulously observed in the provisions of the Internal Security Act.

Under article 149 any provision in the Internal Security Act designed against action prejudicial to national security is declared "valid notwithstanding that it is inconsistent with any of the provisions of article 5, 9 or 10", namely, the fundamental liberties. This, of course, means sanction of encroachments on the rule of law, justified in the national interest. Under the circumstances I think it must be frankly acknowledged that a perfect decision is in most cases an unattainable ideal. Once this fact is appreciated it seems to me that the issues raised in this appeal require a realistic approach rather than as an exercise in semantics. My decision in this appeal is based accordingly.

Like my brother Suffian I have the invidious task of electing whether to give more weight to English or Indian decisions in preference to the other. In this appeal we are of the same mind. Broadly speaking, Malaysia has more in common with England than India in so far as problems of preventive detention are concerned. For one thing, like England, Malaysia is compared. However for he lives from Whitehall the average Englishman does not think along parochial or provincial lines on important questions of the day. Multiracial though our society is in Malaysia, there are no two views regarding subversion. The virtue of compactness is that it makes for closer uniformity. India, on the other hand, is a vast sub-continent by itself and people do think differently who are thousands of miles apart having divergent interests. What commended itself as a good and sufficient reason in particular cases for preventive detention in Bombay, for instance, or Calcutta, might be considered unconscionable in Delhi.

Perusing both English and Indian authorities has been no small task, but at the end of it all I would sum up by saying that, in my humble opinion, English courts take a more realistic view of things, while Indian judges, for whom I have the highest respect, impress me as indefatigable idealists seeking valiantly to reconcile the irreconcilable whenever good conscience is pricked by an abuse of executive powers.

In this appeal the first of the issues raised concerns the onus of proof. It was urged that, on the proper interpretation of clause (2) of article 5 of the Constitution, the party to satisfy the court that the detention is lawful is the respondent. With respect, I take the same view as Suffian F.J. who has dealt with this question at length. Paraphrasing what was said by Lord Macmillan in *Liversidge* v. *Anderson* [12] (at p. 258), in my opinion, production by the respondent Minister of an order of detention by him, *ex facie* regular and duly authenticated, constitutes a peremptory defence to any complaint of unlawful detention and places on the complainant the burden of establishing that the order is unwarranted, defective or otherwise invalid.

Proceeding next to question the validity of the order, learned counsel argued that the order itself was defective *ex facie* in that it was expressed to have been made "with a view to preventing that person from acting in any manner prejudicial to the security of Malaysia/ the maintenance of public order therein/the maintenance of essential services therein". As I am given to understand, such vagueness or ambiguity should be regarded by this court as intrinsic evidence — apart from criticisms of the grounds and allegations of fact supplied to the appellant — showing that the decision of the Cabinet had been made without the care and consideration that is essential where an order is made in good faith. In this connection want of good faith, of course, means no more than that, in the serious matter of depriving a citizen of his liberty without trial, there was absence of care, caution and a proper sense of responsibility. On this interpretation of *mala fides* there is no difference of opinion. If it was true that the order came to be made in a casual or cavalier fashion, it cannot properly be said that the Cabinet or the Minister concerned had been "satisfied". On the other hand, if the decision was made upon a proper evaluation of the facts and surrounding circumstances and after due deliberation, that was all which could be required for the issue of an order based on subjective satisfaction. In the final analysis, the issue is one of fact.

In my view, when dealing with a question of fact, it will not do to wear blinkers, or to read the words of the order as strictly as one would construe an Act of Parliament or a penal or taxing statute. The grounds on which the detention order was made must be read in their proper context. The allegation, in categorical terms, was that since 1957 the appellant had consistently acted in a manner prejudicial to the security of Malaysia. In the same paper itself were set out a series of allegations of fact. They indicate with unmistakable clarity that over a number of years till 1964 (when the appellant left these shores, a fact admitted in his own affidavit) the appellant followed a certain pattern of conduct and that since he reappeared on the Malaysian scene in March 1967 he had lost no time in involvement with the labour dispute in Bukit Asahan. After his detention he elected for a considerable time to

make no representations against the detention. Taking all this into consideration, can it be said that he was ever in the dark about what, in truth, was the sole and substantive ground for his detention or that he was so embarrassed, through ignorance of the ground for his detention, that he was unable to make proper representations? This is a question of fact which the learned trial judge found against the appellant. Mine is a concurrent finding. Having so found I would treat the irrelevant grounds as immaterial surplusage. The appellant was not, for a moment, misled nor was he ever prejudiced thereby in any way. For my part, I see no reason to put such a strict construction on wording that the surplusage — nothing more than a technical defect — should be held to invalidate the order.

There remains, in my view, only one other material issue to be disposed of. The respondent, Minister of Home Affairs, was the Deputy Prime Minister. In his affidavit of April 17, 1968, it was averred that he signed the order on May 17, 1967 "as the result of the decision of the Cabinet to prevent the applicant from acting in a manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of public order or essential services therein under section 8(1) of the Internal Security Act 1960". Was the specific reference to the extra grounds merely a technical error in form or so serious in substance as to amount to an incurable defect? It can only be material if there is an irresistible, or at least a reasonably strong, inference that the Cabinet gave little or no thought to the sole and substantive ground for deciding upon a detention order. On the other hand, if they did deliberate before so deciding, it cannot be gainsaid that the Cabinet was "satisfied". On this point there is no question that the matter was actually raised at a Cabinet meeting and a decision taken thereon. Such being the case, I do not think it can be seriously suggested that the order came to be made unthinkingly as the result of some lapse in Cabinet proceedings. Once we accept that the Cabinet did satisfy themselves as to the propriety of the order that is the end of the matter.

I would dismiss the appeal.

Suffian F.J.: This is an appeal against the decision of Ibrahim J., who dismissed an appliton for a writ of *habeas corpus* made by Mr. Karam Singh, an advocate and solicitor, hereinafter referred to as the appellant.

The appellant is detained under an order of detention signed on 17th May, 1967, by the respondent, Tun Haji Abdul Razak, in his capacity as Minister of Home Affairs under section 8(1)(a) of the Internal Security Act, 1960, hereinafter referred to as the Act.

The question for decision is therefore whether the appellant's detention is lawful.

To understand the facts, it is necessary first to refer to section 8(1)(a) of the Act which is in the following words:—

> "If the Yang di-Pertuan Agong is satisfied with respect to any person that, with a view to preventing that person from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of public order or essential services therein, it is necessary to do so, the Minister shall make an order —
>
> (a) directing that such person be detained for any period not exceeding two years; . . . ."

It is to be noted that several parties are involved in the making of a detention order. First, the Yang di-Pertuan Agong must be satisfied that it is necessary to order a person to be detained with a view to all or any of the purposes mentioned in the section. By virtue of article 40 of the Constitution, in the exericse of this power His Majesty acts on the advice of the Cabinet or of a Minister acting under the general authority of the Cabinet. Finally there is the Minister of Home Affairs — once His Majesty is satisfied, the Minister makes the necessary detention order.

When the Cabinet met to consider Mr. Karam Singh's case prior to his arrest, they had before them two sets of documents —

(a) documents known as the "long allegations" considered for the purpose of deciding whether or not the appellant should be detained, and

(b) the allegations of fact contained in the statement to be served upon him under section 11(2)(b) of the Act (which I shall refer to as the "short allegations").

To understand the significance of these allegations of fact, it is necessary now to reproduce certain provisions of the Constitution and of the Act.

Preventive detention is legal only by virtue of Part XI of the Constitution which includes article 151.

Article 151 provides:—

> "(1) Where any law or ordinance made or promulgated in pursuance of this Part provides for preventive detention —
>
> (a) the authority on whose order any person is detained under that law or ordinance shall, as soon as may be, inform him of the grounds for his detention and, subject to clause (3) the allegations of fact on which the order is based, and shall give him the opportunity of making representations against the order as soon as may be;
>
> (b) no citizen shall be detained under that law or ordinance for a period exceeding three months unless an advisory board constituted as mentioned in clause (2) has considered any representations made

by him under paragraph (a) and made recommendations thereon to the Yang di-Pertuan Agong.

(2) An advisory board constituted for the purposes of this article shall consist of a chairman, who shall be appointed by the Yang di-Pertuan Agong and who shall be or have been, or be qualified to be, a judge of the Federal Court or a High Court, or shall before Malaysia Day have been a judge of the Supreme Court, and two other members, who shall be appointed by the Yang di-Pertuan Agong after consultation with the Lord President of the Federal Court.

(3) This article does not require any authority to disclose facts whose disclosure would in its opinion be against the national interest."

Sections 9 and 11 of the Act provide:—

"9. Whenever any person is detained under any order made under paragraph (a) of sub-section (1) of section 8 he shall, in accordance with article 151 of the Constitution, as soon as may be —

(a) be informed of the grounds of his detention;

(b) subject to clause (3) of the said article (which provides that no authority may be required to disclose facts whose disclosure would in its opinion be against the national interest) be informed of the allegations of fact on which the order is based; and

(c) be given the opportunity of making representations against the order as soon as may be."

"11. (1) A copy of every order made by the Minister under paragraph (a) of sub-section (1) of section 8 shall as soon as may be after the making thereof be served on the person to whom it relates, and every such person shall be entitled to make representations against the order to an advisory board.

(2) For the purpose of enabling a person to make representations under sub-section (1) he shall, within fourteen days of the service on him of the order —

(a) be informed of his right to make representations to an advisory board under sub-section (1); and

(b) be furnished by the Minister with a statement in writing —

(i) of the grounds on which the order is made;

(ii) of the allegations of fact on which the order is based; and

(iii) of such other particulars, if any, as he may in the opinion of the Minister reasonably require in order to make his representations against the order to the advisory board.

(3) . . . ."

It was decided that the appellant should be arrested and detained.

On 17th May, 1967, an order of detention was made under the hands of the respondent [his Lordship then quoted the order of detention as appears at p. 130 *ante* and continued].

On 18th May, Chief Inspector Goh received from the Ministry —

(a) the original order of detention with three copies,

(b) two copies of the statement to be furnished to the appellant as required under section 11(2)(b) of the Act and

(c) two copies of notification of right of representation under section 11(2)(a) of the Act.

On the same day the chief inspector saw the appellant at the police post in the compound of the General Hospital, Kuala Lumpur. He explained the purpose of his visit, read to the appellant the original order of detention and the statement and gave him a copy of the order, two copies of the statement and a copy of the notification of the right of representation.

The statement furnished to the appellant under section 11(2)(b) is the "short allegations" which had been submitted to Cabinet. [His Lordship then quoted the statement of the grounds and allegations of facts as appear at p. 131 *ante* and continued].

The statement consists of two parts:—

(a) the first part which states the grounds on which the order of detention was made; and

(b) the second part which consists of the allegations of fact on which the order was based.

The long allegations which were before the Cabinet were prefaced with a note "Items sidelined should not on any account be revealed to detainee". This is a direction by the Minister that the disclosure of the sidelined paragraphs would in his opinion be against the national interest, as provided by article 151(3) of the Constitution. There were five such paragraphs. They were made available to the advisory board but not to the appellant or his counsel.

Dato' Marshall's several arguments attacking the legality of the detention may be summarised under three headings.

First, he says that the learned judge failed to recognise the nature and extent of the onus placed on the respondent by the Constitution to prove the legality of the detention and was wrong in holding that there was an onus on the appellant to discharge.

Secondly, he says that section 8 of the Act allows a person to be detained on four grounds, that the order of detention states three grounds in the alternative, that the grounds supplied to the appellant state only one ground, that this shows a casual and cavalier attitude on the part of the responsible authorities, that this shows that they have not given the matter adequate consideration and that therefore the order of detention is invalid and the appellant's detention unlawful.

Thirdly, Dato' Marshall says that the allegations of fact supplied to the appellant are vague, insufficient and irrelevant, that such vagueness, insufficiency and irrelevance hamper the appellant in the exercise of his right to make representations, and that this invalidates

the original order of detention and therefore the appellant's detention is unlawful.

Logically, I should deal with the three arguments in the order given, but I find it convenient to deal with the first argument last.

SECOND ARGUMENT

Dato' Marshall contends that the order of detention signed by the Minister against the appellant is void and therefore the appellant's detention is illegal.

Dato' Marshall argues that section 8(1)(a) of the Internal Security Act authorises the detention of a person on four grounds, namely, with a view to —

(1) preventing him from acting in a manner prejudicial to the security of Malaysia, or

(2) preventing him from acting in a manner prejudicial to the security of any part of Malaysia, or

(3) preventing him from acting in a manner prejudicial to the maintenance of public order in Malaysia or any part thereof, or

(4) preventing him from acting in any manner prejudicial to the maintenance of essential services in Malaysia or any part thereof.

The order of detention which was on a cyclostyled form, however, gave these grounds for detaining the appellant, namely,

> "With a view to preventing/him/from acting in any manner prejudicial to the security of MALAYSIA/ the maintenance of public order therein/in the maintenance of essential services therein:"

It is argued that the order of detention is ambiguous. Did it specify one or two or three grounds? If the strokes mean, as they usually do, "and/or", then the order specified any or all three grounds.

But the Minister in his affidavit said that the decision of the Cabinet was to prevent the appellant from acting in a manner prejudicial to the security of Malaysia *or* any part thereof *or* to the maintenance of public order *or* essential services therein. Dato' Marshall says that the appellant's detention must be only on one of these grounds, but which one? Dato' Marshall draws attention to the fact that one of these grounds is the maintenance of essential services, and "essential services" mean, according to section 8(1)(b), any of the following services: water, electricity, public health, fire, prison, postal, telephone, telegraph, radio communication (including broadcasting and television); port, dock and harbour services and undertakings; public transport services by land, sea or air and bulk distribution of fuels and lubricants. But it is said that the allegations of fact supplied to the appellant do not support any of these.

Further, it is said that the grounds served on the appellant by Chief Inspector Goh mentioned only one ground, namely, that the appellant had since 1957 consistently acted in a manner prejudicial to the security of Malaysia.

All this goes to show, it is said, *mala fides* meaning not personal animosities towards the appellant, but a casual and cavalier attitude, and inadequate consideration on the part of the authorities as to the necessity for the appellant's detention, and this, on the authority of cases decided by the Indian Supreme Court, of which I need mention only four, namely, *Dwarka Das* v. *State of Jammu & Kashmir*,[5] *Ram Manohar* v. *State of Bihar*,[4] *Jagannath Misra* v. *State of Orissa* [2] and *Sadanandan* v. *State of Kerala & Anor.*,[10] invalidates the order of detention and renders the appellant's detention unlawful.

In *Dwarka Das* [5] the petitioner was detained by order of the Government of the State of Jammu and Kashmir under section 3(2) taken with section 12(1) of the Jammu and Kashmir Preventive Detention Act, 2011. The order recited that the petitioner was detained "with a view to preventing him from acting in a manner prejudicial to the maintenance of supplies and services essential to the community". The grounds of detention furnished to him stated that he was involved in "illicit smuggling of essential goods, such as cloth, zari and mercury, to Pakistan through the border, thereby affecting the economic condition of the public in Kashmir State adversely". It turned out that cloth and zari were not essential goods, only mercury was. The Supreme Court held that the order of detention was bad. Jagannadhadas J. said at page 168:—

> "Where power is vested in a statutory authority to deprive the liberty of a subject on its subjective satisfaction with reference to specified matters, if that satisfaction is stated to be based on a number of grounds or for a variety of reasons, all taken together, and if some out of them are found to be non-existent or irrelevant, the very exercise of that power is bad. . . . . To uphold the validity of such an order in spite of the invalidity of some of the reasons or grounds would be to substitute the objective standards of the court for the subjective satisfaction of the statutory authority."

To understand Dato' Marshall's reliance on the other three Indian Supreme Court decisions, it is necessary first to observe that in India when the three cases were decided, preventive detention was authorised by rules made under the Defence of India Act No. 51 of 1962. The preamble to the Act reads:—

> "Whereas the president has declared by proclamation under clause (1) of article 352 of the Constitution

that a grave emergency exists whereby the security of India is threatened by external aggression;

AND WHEREAS it is necessary to provide for special measures to ensure the public safety and interest, the defence of India and civil defence and for the trial of of certain offences and for matters connected therewith;

BE IT THEREFORE ENACTED by Parliament in the Thirteenth Year of the Republic as follows:—".

Section 3 of the Act, empowering the Central Government to make rules, reads:—

"(1) The Central Government may, by notification in the official *Gazette*, make such rules as appear to it necessary or expedient for securing the defence of India and civil defence, the public safety, the maintenance of public order or the efficient conduct of military operations or for maintaining supplies and services essential to the life of the community.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), the rules may provide for all or any of the following matters namely:—

(15) notwithstanding anything in any other law for the time being in force, —

(i) the apprehension and detention in custody of any person whom the authority empowered by the rules to apprehend or detain (the authority empowered to detain not being lower in rank than that of a district magistrate) suspects, on grounds appearing to that authority to be reasonable, of being of hostile origin or of having acted, acting, being about to act or being likely to act in a manner prejudicial to the defence of India and civil defence, the security of the State, the public safety or interest, the maintenance of public order, India's relations with foreign States, the maintenance of peaceful conditions in any part or area of India or the efficient conduct of military operations, or with respect to whom that authority is satisfied that his apprehension and detention are necessary for the purpose of preventing him from acting in any such prejudicial manner."

Certain rules were made by the Central Government under section 3. We are concerned only with rule 30(1) which in so far as material reads:—

"Restrictions of movements of suspected persons, restriction orders and detention orders —

(1) the Central Government or the State Government, if it is satisfied with respect to any particular person that with a view to preventing him from acting in any manner prejudicial to the defence of India and civil defence, the public safety, the maintenance of public order, India's relations with foreign powers, the maintenance of peaceful conditions in any part of India, the efficient conduct of military operations or the maintenance of supplies and services essential to the life of the community, it is necessary so to do, may make an order —

(a) . . . . ;

(b) directing that he be detained."

Section 40 empowers the Central Government to delegate its powers or duties to any officer subordinate to the Central Government, and a State Government to any officer not being subordinate to the Central Government.

Articles 21 and 22 of the Indian Constitution are also relevant. They read as follows:—

"21. *Protection of life and personal liberty.* — No person shall be deprived of his life or personal liberty except according to procedure established by law.

22. *Protection against arrest and detention in certain cases.* — (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall be be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply —

(a) to any person who for the time being is an enemy alien;

(b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless —

(a) an advisory board consisting of persons who are, or have been, or are qualified to be appointed as, judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention;

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe —

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an advisory board in accordance with the provisions of sub-clause (a) of clause (4);

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(c) the procedure to be followed by an advisory board in an inquiry under sub-clause (a) of clause (4)."

In *Ram Manohar*,[4] Dr. Lohia was ordered to be detained by the district magistrate, Patna, to whom power had been properly delegated, with a view, in the words of the order of detention, "to preventing him from acting in any manner prejudicial to the public safety and the maintenance of *law and order*". Dr. Lohia

argued that this order was not in terms of rule 30(1) under which it purported to have been made and, therefore, furnished no legal justification for his detention. The rule did not justify detention of a person to prevent him from acting in a manner prejudicial to the maintenance of law and order and yet the order directed detention for such a purpose. The rule provided for an order of detention being made to prevent acts prejudicial to the maintenance of public order, but it was argued that (a) public order and (b) law and order are not the same thing and, therefore, though an order of detention to prevent acts prejudicial to public order might be justifiable, yet a similar order to prevent acts prejudicial to law and order would not be justified by the rule. The Supreme Court, by a majority, accepted this argument.

Sarkar J. said at page 764:—

"The satisfaction of the Government which justifies the order under the rule is a subjective satisfaction. A court cannot enquire whether grounds existed which would have created that satisfaction on which alone the order could have been made in the mind of a reasonable person. If that is so — and that indeed is what the respondent State contents — it seems to me that when an order is on the face of it not in terms of the rule, a court cannot equally enter into an investigation whether the order of detention was in fact, that is to say, irrespective of what is stated in it, in terms of the rule. In other words, in such a case the State cannot be heard to say or prove that the order was in fact made, for example, to prevent acts prejudicial to public order which would bring it within the rule though the order does not say so. To allow that to be done would be to uphold a detention without proper order."

Further on the same page the learned judge said:—

"If a man can be deprived of his liberty under a rule by the simple process of the making of a certain order, he can only be so deprived if the order is in terms of the rule. Strict compliance with the letter of the rule is the essence of the matter. We are dealing with a statute which drastically interferes with the personal liberty of people, we are dealing with an order behind the face of which a court is prevented from going. I am not complaining of that. Circumstances may make it necessary. But it would be legitimate to require in such cases strict observance of the rules. If there is any doubt whether the rules have been strictly observed, that doubt must be resolved in favour of the detenu."

In *Jagannath* [2] the petitioner was detained by the State Government of Orissa. The order of detention said that this was:—

"With a view to preventing [the petitioner] from acting in any manner prejudicial to the defence of India and civil defence, the public safety, the maintenance of public order, India's relations with foreign powers, the maintenance of peaceful conditions in any part of India or the efficient conduct of military operations."

It will be noticed that the order mentioned six grounds on the basis of which the petitioner was detained, namely, acting in any manner prejudicial to —

(1) the defence of India and civil defence,

(2) the public safety,

(3) the maintenance of public order,

(4) India's relations with foreign powers,

(5) the maintenance of peaceful conditions in any part of India, and

(6) the efficient conduct of military operations.

These six grounds practically covered all the grounds specified in section 3(2)(15) of the Defence of India Act except two, namely —

(1) the security of the States and

(2) being of hostile origin.

It was therefore urged that the order was made by copying out practically all the grounds specified in that section without the application of the mind of the Minister whether those grounds were made out in that case. The Supreme Court agreed and held that the order of detention was void and the petitioner's detention unlawful. Wanchoo J. delivering the judgment of the court, said at page 1142:—

"It seems to us therefore necessary where detention is made under the rules that the authority ordering detention should act with a full sense of responsibility keeping in mind on the one hand the interests of the country in the present emergency and on the other the importance of the liberty of the citizen in a democratic society. That this is so is also emphasised by section 44 of the Act which lays down that 'any authority or person acting in pursuance of this Act shall interfere with the ordinary avocations of life and the enjoyment of property as little as may be consonant with the purpose of ensuring the public safety and interest and the defence of India and civil defence'. In view of this specific provision in the Act it is incumbent upon the [detaining] authority . . . . that it should act with due care and caution and see that the person detained is so detained on grounds which justify the detention in the interest of the country. Further the proceedings in the matter of detention and the order of the detention should show that it had acted with all due care and caution and with the sense of responsibility necessary when a citizen is deprived of his liberty without trial."

In *Sadanandan* v. *State of Kerala & Anor.* [10] Gajendragadkar C.J. said at page 1930:—

"After all, the detention of a citizen in every case is the result of the subjective satisfaction of the appropriate authority; and so, if a *prima facie* case is made by the petitioner that his detention is either *mala fide* or is the result of a casual approach adopted by the appropriate authority, the appropriate authority should place before the court sufficient material in the form of proper affidavit made by a duly authorised person to show that the allegations made by the petitioner about the casual character of the decision or its *mala fides*, are not well-founded."

Later on the same page he said:—

". . . . the freedom of Indian citizens cannot be taken away without the existence of the justifying necessity specified by the rules themselves. The tendency to treat these matters in a somewhat casual and cavalier manner which may conceivably result from the continuous use of such unfettered powers, may ulti-

mately pose a serious threat to the basic values on which the democratic way of life in this country is founded."

Judgments of the Indian Supreme Court are of great persuasive value here, particularly on the Constitution because to a great extent the Indian Constitution was the model for our own Constitution. But having given this matter anxious consideration, I have come to the conclusion that with deep respect the Indian Supreme Court should not in this matter be followed.

I would prefer to follow with respect the reasoning of the English Court of Appeal in *The King* v. *Secretary of State for Home Affairs, Ex parte Lees*.[11] There the Defence (General) Regulations, 1939, made under powers conferred by section 1 of the Emergency Powers (Defence) Act, 1939, provided in regulation 18B (1A) that "if the Secretary of State has reasonable cause to believe any person to have been or to be a member of, or to have been or to be active in the furtherance of the objects of, any such organisation as is hereinafter mentioned, and that it is necessary to exercise control over him, he may make an order against that person directing that he be detained." The Home Secretary made an order for the detention of Lees, the applicant, under that regulation as he had reasonable cause to believe "that you have been a member of the organisation now known as the 'British Union'; and to have been active in the furtherance of its objectives". Lees applied for a writ of *habeas corpus*. Challenging the legality of the order, his counsel argued that it was bad on the face of it because its recital read:—

"Whereas I have reasonable cause to believe [the applicant] to have been or to be a member of or to have been or to be active in the furtherance of the objectives of an organisation" etc.

The order followed strictly the language of the regulation, but it was argued that it was bad for duplicity in that the two allegations of membership and of activity in connection with the objects of the organisation are stated *in the alternative*. It was said that they afforded separate grounds for the making of an order and that one or other or both of those grounds of belief should appear as the reason for making the order. This argument was emphatically rejected by the Divisional Court. Humphreys J. said at page 78:—

"In our opinion there is nothing in the point. The document in question is not a conviction nor an indictment nor even a charge. Grammatically, it may be perfectly correct to say that the Home Secretary had reasonable cause to believe that the applicant was either a member of or was active in the furtherance of the objects of the association so as to justify the making of the order. It might, with equal force, be urged that the words 'to have been or to be' render the order bad upon the face of it.

We find nothing in the statute or the regulations requiring that the order should be in any particular form and, in our judgment, the order is not invalid upon this ground."

The same argument was urged before the Court of Appeal. Again, it was rejected. MacKinnon L.J. said at page 83:—

". . . . I agree with everything that was said in the very careful judgment of the Divisional Court delivered by Humphreys J., which seems to me to cover all the ground and to be manifestly correct."

The order in the instant case followed the language of section 8 of the Internal Security Act, except for an omission which, in my view, is immaterial. The document in question is not a conviction nor an indictment nor even a charge. There is nothing in the Act requiring that the order should be in any particular form and, in my judgment, the order is not invalid.

It seems to me that there has been confusion in this matter by Dato' Marshall's frequent use throughout his arguments of the word "grounds". In my judgment, the words "with a view to preventing that person from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of public order or essential services therein" in section 8(1)(a) of the Internal Security Act do not indicate the grounds for a person's detention; they indicate its purpose or purposes. It is true that the grounds for a person's detention must be given, but grounds are quite distinct from purposes. The Minister has given the grounds for the appellant's detention in Exhibit A1*. These grounds are quite distinct from the purposes stated in the order of detention, and when the two are read together there is in my opinion no conflict or discrepancy between them. Put in different words, what the grounds supplied and the order of detention say is this: because (grounds) you the appellant have since 1957 consistently acted in a manner prejudicial to the security of Malaysia, the Yang di-Pertuan Agong is satisfied that it is necessary to direct that you be detained with a view to (purposes) preventing you from acting in any manner prejudicial to the security of Malaysia or to the maintenance of public order or to the maintenance of essential services in Malaysia. It is true that the grounds use a phrase which occurs in the order of detention and in section 8 of the Act and Dato' Marshall has fastened on the alleged discrepancy between the language of the grounds and of the order of detention. But in my judgment there is no need for the grounds to be identical with any or all of the purposes of detention. The grounds supplied could be in words totally different from the statement of the purposes of detention.

* See page 131 *supra*.

It would appear that the Indian courts insist on strict compliance with the law because of two reasons.

The first reason, as stated by the learned Solicitor-General, is probably this, that in India the power of detention, though given in the first instance to the Central and State Governments, was often exercisable, as shown by the reported cases, by civil servants who are not answerable politically to Parliament and whose action must therefore be closely scrutinised by the courts. Here, however, the power of detention is given to the highest authority in the land, the Yang di-Pertuan Agong acting on Cabinet advice, and there has been no delegation to civil servants.

It is significant that in *Liversidge* v. *Sir John Anderson* [12] Viscount Maugham observed at page 222:—

". . . . it is to be noted that the person who is primarily entrusted with these most important duties [in connection with detaining persons without trial in England] is one of the principal Secretaries of State, and a member of the government answerable to Parliament for a proper discharge of his duties. I do not think he is at all in the same position, as, for example, a police constable."

The second reason for the strict attitude taken by the Indian Supreme Court is probably this, that in India article 21 of the Constitution provides that "no person shall be deprived of his life or personal liberty except according to procedure established by law".

In the *State of Bombay* v. *Atma Ram* [1] Kania C.J. referred in paragraph 16 on page 165 of his judgment to the *"procedural rights* of the detenu" mentioned in article 22(5). Sastri J. in his judgment at page 166 said this:—

"If this *procedure* [prescribed by clauses (5) and (6) of article 22] is not complied with, detention under the Act [Preventive Detention Act, 1950] may well be held to be unlawful, as it would then be deprivation of personal liberty which is not in accordance with the procedure established by law."

In contrast, clause (1) of article 5 of our Constitution makes no mention of the word "procedure" and provides simply as follows:—

"No person shall be deprived of his life or personal liberty save in accordance with *law*."

THIRD ARGUMENT

Dato' Marshall's next argument relates to the *allegations of fact** supplied to the appellant under article 151(1)(a) and section 11 of the Act. In a sentence, it is said that the allegations of fact supplied were vague, insufficient and irrelevant, that they prevented the appellant from availing himself of the opportunity of making representations and that this has the effect of invalidating the order of detention and making the detention unlawful. He relies for their contention on three decisions of the Indian Supreme Court, namely *State of Bombay* v. *Atma Ram*,[1] *Dr. Ram Krishan Bhardwaj* v. *State of Delhi* [14] and *Rameshwar Shaw* v. *District Magistrate, Burdwan & Anor.*[15] These are decisions on the Preventive Detention Act No. 4 of 1950 and to understand the cases it is first necessary to give relevant extracts from the Act.

Section 3 thereof gives power to make orders detaining certain persons and reads:—

"(1) The Central Government or the State Government may —

(a) if satisfied with respect to any person that with a view to preventing him from acting in a manner prejudicial to —

(i) the defence of India, the relations of India with foreign powers, or the security of India, or

(ii) the security of the State or the maintenance of public order, or

(iii) the maintenance of supplies and services essential to the community, or

(b) . . . . ,

it is necessary so to do, make an order directing that such person be detained.

(ii) Any district magistrate or sub-divisional magistrate, or in a presidency-town, the commissioner of police may, if satisfied as provided in sub-clauses (ii) and (iii) of clause (a) of sub-section (1), exercise the power conferred by the said sub-section.

(iii) When an order is made under this section by a district magistrate, sub-divisional magistrate or commissioner of police, he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as in his opinion having a bearing on the necessity for the order."

Section 7 provides for the supply of the grounds of the order of detention to persons affected by the order and reads:—

"(1) When a person is detained in pursuance of a dention order, the authority making the order shall, as soon as may be, communicate to him the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order, in a case where such order have been made by the Central Government to that Government, and in a case where it has been made by a State Government or an officer subordinate thereto to the State Government.

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose."

It will be observed that in India the detention authority need communicate to the detainee only the grounds on which the order of detention has been made. There is no constitutional or statutory requirement, as there is in Malay-

* Exhibit A1, paragraph 2 onwards — page 131 *supra*.

sia, that he must also be supplied with the allegations of fact on which the order is based. The Indian courts have, however, held that the satisfaction of the detaining authority on which the order of detention is based is open to challenge and the detention order liable to be quashed, if any of the grounds furnished to the detenu are found to be irrelevant when considering the application of section 3(1)(a), or if some of the grounds supplied to him are so vague that they would virtually deprive him of the statutory right of making a representation.

In *Atma Ram* [1] the respondent was arrested on 21st April, 1950, under the Preventive Detention Act, 1950, under an order made by the Commissioner of Police. Nine days later grounds for his detention were supplied to him. They were in the following terms:—

"That you are engaged or are likely to be engaged in promoting acts of sabotage on railway and railway property in Greater Bombay."

In his petition for *habeas corpus* he contended that the ground was "delightfully vague and does not mention when, where or what kind of sabotage or how the applicant promoted it", that the ground gave no particulars and, therefore, was not a ground as required to be furnished under the Preventive Detention Act, 1950. He stated that the detaining authority acted *mala fide*, for a collateral purpose, outside the scope of the Act, and that therefore his [the respondent's] detention in any event was illegal and *mala fide*.

The Supreme Court agreed that a detenu should have sufficient information to enable him to make a representation and if it was not sufficient the order of detention was invalid.

Kania C.J. said at page 161:—

"The first part of art. 22, clause (5) gives a right to the detained person to be furnished with 'the grounds on which the order has been made' and that has to be done 'as soon as may be'. The second right given to such person is of being afforded 'the earliest opportunity of making a representation against the order'."

At page 163 the learned Chief Justice said:—

". . . . the question whether such ground can give rise to the satisfaction required for making the order is outside the scope of the inquiry of the court. On the other hand, the question whether the vagueness or indefinite nature of the statement furnished to the detained person is such as to give him the earliest opportunity to make a representation to the authority is a matter within the jurisdiction of the court's inquiry and subject to the court's decision. . . . . The conferment of the right to make a representation necessarily carries with it the obligation on the part of the detaining authority to furnish the grounds, i.e., materials on which the detention order was made. In our opinion, it is therefore clear that while there is a connection between the obligation on the part of the detaining authority to furnish grounds and the right given to the detained person to have an earliest opportunity to make a representation, the test to be applied in respect of the contents of the grounds for the two purposes is quite different. As already pointed out, for the first, the test is whether it is sufficient to satisfy the authority. For the second, the test is, whether it is sufficient to enable a detained person to make a representation at the earliest opportunity."

Three other judges gave judgments on this point to the same effect as the learned Chief Justice. A minority of two judges, however, disagreed.

The learned Solicitor-General, however, urges us to follow the reasoning of Sastri J. who said in his dissenting judgment at pages 166-7:—

"When the power to issue a detention order has thus been made to depend upon the existence of a state of mind in the detaining authority, that is, its 'satisfaction', which is a purely subjective condition, so as to exclude a judicial enquiry into the sufficiency of the grounds to justify the detention, it seems to me to be wholly inconsistent with that scheme to hold that it is open to the court to examine the sufficiency of the same grounds to enable the person detained to make a representation, for be it noted, the grounds to be communicated to the person detained are the 'grounds on which the order has been made'. Indeed the logical result of the argument advanced by the respondent's counsel would be to invalidate section 3 of the Act in so far as it purports to make the satisfaction of the government the sole condition of a lawful detention, for, if clause (5) of art. 22 were to be construed as impliedly authorising a judicial review of the grounds of detention to see if they contain sufficient particulars for making a representation, then the subjective condition prescribed in section 3 would be inconsistent with that clause and therefore void."

Later on on the same page the learned judge said:—

"I am unable to agree with what appears to be the major premise of the argument, namely, that clause (5) contemplates an inquiry where the person detained is to be formally charged with specific acts or omissions of a culpable nature and called upon to answer them. As pointed out by Lord Atkinson in *Rex* v. *Halliday* [16] at page 275, preventive detention being a precautionary measure, 'it must necessarily proceed in all cases to some extent on suspicion or anticipation as distinct from proof', and it must be capable of being employed by the executive government in sudden emergencies on unverified information supplied to them by their police or intelligence officers. If the Government, acting honestly and in good faith, make an order, being 'satisfied' on such information, however lacking in particulars, that a person should be detained in the public interest as they have been empowered by Parliament to do, then all that art. 22(5) requires of them is to communicate as soon as may be the grounds which led to the making of the order to the person concerned, and to give him the earliest opportunity of making any representation which he may wish to make on the basis of what is communicated to him. If such communication is made and opportunity is given, the detaining authority will have complied with the procedure prescribed by the Constitution, and the person under detention cannot complain that he has been deprived of his personal liberty otherwise than in accordance with procedure established by law. I can find nothing in art. 22, clause (5) to warrant the view that the grounds on which the order of detention has been made must be such that, when communicated to the person detained they are found by a court of law to be sufficient to enable him to make what the court considers to be an adequate

representation. The right to be produced before a magistrate and to consult and be defended by a legal practitioner is expressly denied by the Constitution itself to a person under preventive detention and this court held in *Gopalan's* case [17] that there was nothing in the Constitution to entitle him to a hearing even before the detaining authority. All this underlines the executive character of the function exercised by the authority which does not in any way embark on a judicial or quasi-judicial inquiry. In such circumstances the representation which the person detained is allowed to make to the Government, which is constituted the judge in its own cause, cannot be assumed to be similar in scope or purpose to a defence against a formulated charge in a court of law. The argument, therefore, that the right of making a representation should be made effective in the sense that the detenu should be enabled to defend himself successfully if possible, and for that purpose, the detaining authority should communicate to him the necessary particulars on pain of having the order [of detention] quashed if such particulars are not furnished, proceeds on a misconception of the true position."

Such was the minority view. To return now to the majority view, what is the test for determining whether grounds supplied are sufficient to enable the detained person to make his representation at the earliest opportunity? As to this, the learned Chief Justice said at page 164:—

"Vague can be considered as the antonym of 'definite'. If the ground which is supplied is incapable of being understood or defined with sufficient certainty it can be called vague. It is not possible to state affirmatively more on the question of what is vague. It must vary according to the circumstances of each case. It is, however, improper to contend that a ground is necessarily vague if the only answer of the detained person can be to deny it. That is a matter of detail which has to be examined in the light of the circumstances of each case. If, on reading the ground furnished it is capable of being intelligently understood and is sufficiently definite to furnish materials to enable the detained person to make a representation against the order of detention it cannot be called vague. The only argument which could be urged is that the language used in specifying the ground is so general that it does not permit the detained person to legitimately meet the charge against him because the only aswer which he can make is to say that he did not act, as generally suggested. In certain cases that argument may support the contention that having regard to the general language used in the ground he has not been given the earliest opportunity to make a representation against the order of detention."

Dato' Marshall submits that the allegations of fact supplied to the appellant are not sufficiently definite to furnish materials to enable the appellant to make a representation against the order of detention, that they were vague and therefore the order of detention should be quashed.

The learned Solicitor-General, relying on the same passage just quoted from the learned Chief Justice's judgment in *Atma Ram,*[1] submits that if this court agrees with the majority judgment in this case, then applying the test laid down by the learned Chief Justice, the allegations of fact supplied to the appellant are capable of being intelligently understood and are sufficiently definite to furnish materials to enable the appellant to make a representation against the order of detention.

In the second case relied on by Dato' Marshall, *Dr. Ram Krishan Bhardwaj* v. *State of Delhi,*[14] the Supreme Court affirmed the principle established in *Atma Ram* [1] two years earlier, its judgment being delivered by Sastri, now C.J.

The Supreme Court affirmed the principle a third time in *Rameshwar Shaw.*[15]

I regret I do not agree with Dato' Marshall's submission. In my judgment, detention under an order of the Minister made under section 8 of the Internal Security Act is not illegal simply because the allegations of fact supplied to him in pursuance to article 151(1)(a) and section 11 of the Act are vague, insufficient or irrelevant. I do not see any justification for reading into the Constitution or into the Act any provision to the effect that any imperfection in the allegations of fact supplied to the detainee relates, as it were, to the original order of detention, and goes to its root, so as to render illegal the detention.

In this matter with respect I agree with the reasoning of the minority judgment* by Sastri J. in *Atma Ram* [1] that when the power to issue a detention order has been made to depend on the existence of a state of mind in the detaining authority, which is purely a subjective condition, so as to exclude a judicial inquiry into the sufficiency of the grounds to justify the detention, it would be wholly inconsistent to hold that it is open to the court to examine the sufficiency of the same grounds to enable the person detained to make a representation. Indeed, the logical result of the argument advanced by Dato' Marshall would be to invalidate section 8 of the Internal Security Act in so far as it purports to make the satisfaction of the Government the sole condition of a lawful detention.

Our law is quite different from that of India. First, as already stated, the power of detention is here given to the highest authority in the land, acting on the advice of Minister responsible to and accountable in Parliament, not to mere officials. Secondly, as already stated, here detention, in order to be lawful, must be in accordance with law, not as in India where it must be in accordance with *procedure* established by law. I have underlined the word "procedure" twice in the extract† from Sastri J.'s minority judgment in *Atma Ram* [1] above, to show the importance attached to procedure under Indian law. Thirdly, here a detainee is

* Page 149 *supra.*

† On page 149 *supra.*

entitled, not only to two things, as in India, namely —

(1) to be informed of the grounds for his detention; and

(2) to be given an opportunity of making representations against the order of detention;

but also to two other things not available to a detainee in India, namely —

(3) to be informed of the allegations of fact on which the order is based, article 151(1)(a) and section 11(2)(a)(ii) of the Act; and

(4) to be furnished in writing with a statement of such other particulars, if any, as he may, in the opinion of the Minister, reasonably require in order to make his representations against the order, section 11(2)(b)(iii) of the Act.

In my judgment, if a detainee honestly feels handicapped by the vagueness, insufficiency or irrelevancy of the allegations of fact on which the detention order is based, he has clearly recourse under section 11(2)(b)(iii) of the Act to additional particulars. This right is totally absent in India where indeed the Supreme Court has held that after a detainee has been supplied with the grounds on which the order of detention has been made, as required by article 22(5), no further additional grounds may be supplied to him.

If I am wrong and if the law is that the vagueness, insufficiency and irrelevance of the allegations of fact supplied to the appellant render his detention illegal, then in my view the test to be applied is that laid down by Kania C.J. in *Atma Ram* [1] in the passage already cited* on which the learned Solicitor-General relies. I agree with Ibrahim J. that the allegations of fact furnished to the appellant were capble of being intelligently understood and were sufficiently definite to furnish materials to enable him to make a representation against the order of detention and that therefore they were not vague.

The allegations cover nearly two and half pages of type-script in double spacing. They were supplied to the appellant on the day (18th May, 1967) the order of detention was served on him. At the same time he was notified in writing of his right to make representations. Nine days later he arrived at the detention camp and then again he was informed of his right to make representations. He refused to avail himself of this right. Eventually he did make representations with the assistance of counsel on 27th July, 1967. There was no suggestion before or on that day that the allegations of fact supplied to the appellant were vague, insufficient or irrelevant, nor was any application made by him or his counsel for further particulars. As a result of what was said by the appellant to the advisory board, further inquiries were made by the police and when the further police information came up for consideration by the board, the board invited him to their next meeting on 27th September. However, when the board sat on that day, the appellant was in hospital. The board invited him to their next meeting on 19th December, but he declined.

When the board invited him to attend their meeting in Malacca for a third time, on 27th February, 1968, again he declined.

In view of this, I do not see how it can be said that the allegations of fact supplied to the appellant in any way hindered or prejudiced the representations he wished to make to the advisory board.

Finally, in my opinion, it is not for a court of law to pronounce on the sufficiency, relevancy or otherwise of the allegations of fact furnished to him. The discretion whether or not the appellant should be detained is placed in the hands of the Yang di-Pertuan Agong acting on Cabinet advice. Whether or not the facts on which the order of detention is to be based are sufficient or relevant, is a matter to be decided solely by the executive. In making their decision, they have complete discretion and it is not for a court of law to question the sufficiency or relevance of these allegations of fact.

FIRST ARGUMENT

The point taken under this heading is that the learned judge failed to recognise the nature and extent of the onus placed on the respondent by the Constitution and was wrong in holding that there was an onus on the appellant to discharge.

Dato' Marshall argues that in view of the words underlined in the following reproduction of clause (2) of article 5 of the Constitution:—

> "Where complaint is made to a High Court or any judge thereof that a person is being unlawfully detained the court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the court and release him."

the court must be satisfied that the appellant's detention is lawful, meaning that there is power to detain him, there has been a proper exercise of that power and in the proper form, and that the court must be so satisfied by the Minister.

* On page 150 *supra*.

Dato' Marshall draws our attention to section 366 of the Criminal Procedure Code (Cap. 6) which reads:—

"Every application to bring up before the court a person . . . . alleged to be illegally or improperly detained in custody shall be supported by affidavit stating where and by whom the person is detained and, so far as they are known, the facts relating to such detention, with the object of satisfying the court that there is probable ground for supposing that such person is detained against his will and without just cause.",

and argues that, if the above provision requires a detainee to satisfy the court that his detention is without just cause, then it is contrary to clause (2) of article 5 and therefore the court should exercise its power under clause (6) of article 162 to apply section 366, being pre-Merdeka law, with the necessary modifications to bring it into accord with the Constitution.

The learned Solicitor-General in reply submits that article 5(2) deals not with onus, but with the jurisdiction, competence and power of the High Court and the words underlined therein have nothing to do with onus, but merely specify the necessary condition precedent before the High Court may order a detainee to be produced before it and release him, so that the order of release may be made by the court only when it is satisfied that the detention is unlawful.

He submits that section 366 clearly provides that the detainee must in his affidavit satisfy the court that he is detained without just cause. He further submits that under the Evidence Ordinance the onus is on the appellant to satisfy the court as to the illegality of his detention.

Finally, he submits that here the respondent need only produce the order of detention and it is then for the appellant to prove *mala fides*, lack of good faith or non-application of the mind of the detaining authority and only if he so proves, may the detention be held to be illegal.

In my judgment, the onus of proving the legality of the detention is on the Minister in the first instance. This he can discharge simply by producing the order of detention which, if its authenticity and good faith are not impugned, is a sufficient answer. If the detainee alleges *mala fides*, as he does here, then the onus shifts to him and it is for him to prove *mala fides*. For this proposition there are two House of Lords decision.

In *Greene* v. *Secretary of State for Home Affairs* [3] the House of Lords considered an application for a writ of *habeas corpus* by the appellant detained by the Home Secretary under regulation 18B(1) of the Defence (General) Regulations, 1939.

Lord MacMillan at page 297 said:—

". . . . the production of the Secretary of State's order, the authenticity and good faith of which is in no way impugned, constitutes a complete and peremptory answer to the appellant's application. It justifies in law his detention in the absence of any relevant challenge of its validity, and there is no such challenge."

Then there is *Liversidge* v. *Sir John Anderson* [12] where Viscount Maugham quoted with approval at page 216 the judgment of the Court of Appeal delivered by MacKinnon L.J.:—

". . . . if the plaintiff admits, or it is proved, that the plaintiff was detained by an order purporting or expressed to be issued under the [Defence (General) Regulations, 1939, reiulation 18B] and duly signed as such, the burden is on the plaintiff, if he is to claim damages for false imprisonment [or if he applies for *habeas corpus*], to give evidence showing that the order was invalid. As the case proceeds at the hearing, as often happens, the onus of proof may be shifted. If the plaintiff adduces evidence which goes to show the invalidity of the order, that might happen [that is, the onus of proof is shifted to the defendants]. If, upon that happening, the defendants produced evidence which was embarrassing to the plaintiff, by way of surprise or novelty, the judge would no doubt protect him by way of adjournment. Conceivably in a proper case, the judge might at that stage make some order by way of particulars of the allegations of the defendants."

I am of the opinion that the learned judge in the instant case has not misdirected himself as to the burden of proof. In his judgment he cited the following passage from *Basu's* Commentary on the Constitution of India, Volume 2, 5th Edition, page 90:—

"Where a person who has been deprived of his liberty challenges the detention by a petition for *habeas corpus*, it is for the authority who has detained him to show that the person has been detained in exercise of a valid legal power. Once that is shown, it is for the detenu to show that the power had been exercised *mala fide* or improperly."

The learned judge went on to say that he was satisfied that the appellant's detention had been made in the exercise of a valid legal power, and therefore the onus lay on the appellant to show that such power had been exercised *mala fide* or improperly.

In my judgment the learned judge was right in his conclusion. The order of detention produced by the Minister was an order purporting or expressed to be issued under the Internal Security Act and duly signed by the Minister as such. Its authenticity is not impugned. Its goods faith is impugned — meaning, as has already been said, not that there were personal animosities against the appellant but that there was inadequate consideration of his case before the decision to detain him was taken. But as has already been said, there is no merit in this contention. The appellant has not therefore proved *mala fides*.

Accordingly, this argument of Dato' Marshall also fails.

CONCLUSION

I sum up my conclusion as follows.

A copy of the order or warrant authorising the appellant's detention has been produced as required by section 368 of the Criminal Procedure Code (Cap. 6). It is a warrant signed by the respondent Minister directing that the appellant be detained because "the Yang di-Pertuan Agong is satisfied with respect to [the appellant] that, with a view to preventing [the appellant] from acting in any manner prejudicial to the security of Malaysia/the maintenance of public order therein/the maintenance of essential services therein, it is necessary to make the . . . . order".

The words underlined are identical with the words in section 8(1) of the Internal Security Act except that (a) the order does not contain, as does section 8, the words "or any part thereof" immediately after the word "Malaysia" and (b) the order uses strokes instead of commas. The discrepancies do not affect the validity of the order.

The grounds for the appellant's detention supplied to him only use the words "You . . . . have since 1957 consistently acted in a manner prejudicial to the security of Malaysia . . . ." The fact that the grounds contain only these words and contain no reference to acting in any manner prejudicial to the maintenance of public order or of essential services in Malaysia or any part thereof, does not make the grounds inconsistent with the order. The words underlined above denote the purposes of detention. Purposes of detention are quite distinct from the grounds of detention. The so-called discrepancy between the order and the grounds does not show that the executive has not adequately applied its mind to the desirability of detaining the appellant and therefore does not invalidate the order. The so-called discrepancy is not a discrepancy at all. The order of detention and the grounds, when read together, mean that because the executive thinks (grounds) that the appellant has since 1957 consistently acted in a manner prejudicial to the security of Malaysia, therefore the Yang di-Pertuan Agong is satisfied that it is necessary to detain the detainee with a view to (purposes) preventing him from doing the things specified in the order.

Just as purposes are distinct from grounds of detention, so are grounds of detention distinct from allegations of fact on which the order of detention is based.

The vagueness, insufficiency or irrelevance of the allegations of fact supplied do not relate back to the order of detention, do not go to the root of the order of detention and do not render unlawful detention under a valid order of detention. Still less do they do so if such vagueness, etc., in no way hinders or prejudices the detainee's right of making representations against the order of detention.

If the detainee honestly thinks that the allegations of fact are vague, insufficient or irrelevant, he should ask for particulars. Unlike his counterpart in India, he has here a legal right to particulars, subject to the Minister's privilege in the public interest.

In any event it is not for the court to judge the vagueness, sufficiency or relevance of the allegations of fact on which an order of detention is based. It is for the executive to do so.

The law here is different from that in India.

Here the power of detention is entrusted to the highest authority in the land acting on the advice of Ministers responsible to and accountable in Parliament. In India it is entrusted to comparatively minor officials. Strict compliance with procedure is therefore necessary. It is also necessary for another reason. Article 21 of the Indian Constitution provides that no person shall be deprived of his personal liberty except according to *procedure* established by law. In contrast, clause (1) of our article 5 provides simply that no person shall be deprived of his personal liberty save in accordance with law — without any mention of procedure.

I would therefore dismiss this appeal.

Gill F.J.: I am also of the opinion that this appeal should be dismissed.

Dato' David Marshall on behalf of the appellant has raised three major grounds of appeal, the first of which turns on the question of burden of proof. In relation to this ground of appeal, it is to be observed that the learned trial judge dealt with the appellant's application for *habeas corpus* on the basis of the following passage in *Basu's* Commentary on the Constitution of India (5th Edition), Vol. 2 at page 30:—

> "Where a person who has been deprived of his liberty challenges the detention by a petition for *habeas corpus*, it is for the authority who has detained him to show that the person has been detained in exercise of a valid legal power. Once that is shown, it is for the detenu to show that the power has been exercised *mala fide* or improperly."

Lord Macmillan said words to the same effect in the following passage from his speech in the House of Lords in the case of *Liversidge* v. *Sir John Anderson*:—(12)

> ". . . . I should add that, in my opinion, the production by the Secretary of State of an order of detention by him *ex facie* regular and duly authenticated, such as the House has before it in this case, constitutes a peremptory defence to any action of false imprisonment and places on the plaintiff the burden of

establishing that the order is unwarranted, defective or otherwise invalid."

Admittedly the appellant was detained in the exercise of a valid legal power conferred by section 8(1)(a) of the Internal Security Act, 1960, which was passed pursuant to articles 149 and 151 of the Constitution. I do not see therefore how it can be argued that the learned trial judge erred in law in failing to recognise the nature and extent of the onus on the respondent and in holding that there was an onus on the appellant to discharge.

The second ground of appeal is that the order under which the appellant was detained was on the face of it invalid in that it stated three objects in the alternative out of the four objects for which an order can be made under section 8(1)(a) of the Internal Security Act, 1960, so that it was not possible to say which one of the objects was considered by the Cabinet as the reason for the appellant's detention.

By virtue of article 40(1) of the Constitution, the order of detention was made in accordance with the advice of the Cabinet and it was signed by Tun Abdul Razak bin Hussein in his capacity as the Minister of Home Affairs on 17th May, 1967. The original order was shown to the appellant and a copy of it served on him on 18th May, 1967. There were served on the appellant, at the same time, two copies of notification of his right to make representation, as required by section 11(2)(a) of the Act, and two copies of a statement in writing, as required by section 11(2)(b) of the Act. The first paragraph of the statement was headed "Grounds on which the order is made", and it stated that the appellant had since 1957 consistently acted in a manner prejudicial to the security of Malaysia. It was thus clear from that statement that the object of detaining the appellant was to prevent him from acting in any manner prejudicial to the security of Malaysia. That was the sole object or purpose for his detention, and he knew that it was so from the moment the order was served on him. He was in no way prejudiced by the fact that the order recited two other objects, which quite clearly were not struck out from the cyclostyled form of the order through an oversight. The error in the order being thus an error in form and not in substance, it cannot be said to have rendered the order invalid.

The third ground of appeal is that the allegations of fact supplied to the appellant were vague, inadequate and irrelevant, with the result that it was impossible for him to avail himself of his right to make suitable representations against the order of his detention. This ground of appeal has been so fully dealt with by the Lord President and my brother Suffian that I cannot usefully add anything to what they have said. Each of the eleven allegations of fact was considered fully by the learned trial judge, and I can find no reason to quarrel with his findings of fact. These allegations of fact covered the activities of the appellant over a period of ten years, and the detention order was made on the strength of their cumulative effect. If he thought that they were in any way inadequate, it was open to him to ask for particulars. There is ample authority for the proposition that it is not the function of the court to act as a court of appeal from the discretionary decision of the Cabinet and to inquire into the grounds upon which they came to the belief that it was necessary or desirable in the interests of the security of Malaysia to hold the appellant in detention (see *The King* v. *Secretary of State for Home Affairs, Ex parte Lees* [11]). As was stated by Lord Atkinson in *Rex* v. *Halliday*,[16] it must not be assumed that the powers conferred upon the executive by the statute will be abused. His Lordship went on to say (at page 275):—

> "And as preventive justice proceeds upon the principle that a person should be restrained from doing something which, if free and unfettered, it is reasonably probable he would do, it must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct from proof."

With respect, I agree.

Ali F.J.: This is an appeal from the decision of the learned judge of the High Court at Kuala Lumpur dismissing the appellant's application for directions in the nature of *habeas corpus* that he be set at liberty. The order directing the appellant's detention was signed by the respondent Minister. [His Lordship then quoted the detention order as appears at p. 130 *ante* and continued].

At the time when he commenced proceedings in the High Court, the appellant has been detained for a period of about 9 months. In the purported compliance with the provisions of article 151(1)(a) of the Constitution and with the provision of section 11 of the Internal Security Act, 1960, he was at the time of his arrest served with a copy of the order of detention and other documents which included a statement containing matters described as "grounds on which the order is made" and "allegations of fact", numbering eleven in all. His application for release was treated as a complaint that he was being unlawfully detained within the meaning of article 5(2) of the Constitution. At the hearing of his appeal a point was taken by the appellant that in terms of this clause of the Constitution the onus of proving lawful detention was on the respondent. As the question was largely one of construction, I shall deal shortly with it. The truth is that the appellant

found it necessary to raise this point because in his judgment the learned High Court judge has used these words:—

"It has never been suggested that . . . . or that the order on the face of it is not within the ambit of section 8(1)(a) of the said Act. The onus therefore lies on the applicant to show that such power had been exercised *mala fide* or improperly."

For myself, except for the words "or improperly" I would take the remaining words as saying no more than that the order on the face of it appears to have been made by the proper authority in the lawful exercise of power conferred by section 8(1)(a) of the Internal Security Act, 1960 and that its validity can only be challenged on the grounds of bad faith. The learned High Court judge was undoubtedly aware that the proceedings before him was not an appeal against the exercise of an executive discretion or a trial in which certain issues of facts have to be proved. In terms of article 5(2) of the Cnstitution the High Court was only making an inquiry into the legality or otherwise of the appellant's detention which was largely a question of law. It has often been said in reported cases that in *habeas corpus* proceedings the production of an order of detention is a good return to an application for issue of writ of *habeas corpus*. The need to produce the order is best explained in the words of Lord Atkin who in his dissenting judgment in *Liversidge* v. *Sir John Anderson* [12] said at p. 245:—

"The appellant's right to particulars, however, is based on a much broader ground, a principle which again is one of the pillars of liberty in that in English law every imprisonment is *prima facie* unlawful and that it is for a person directing imprisonment to justify his act."

The only exception to this as pointed out by Lord Atkin is in respect of imprisonment ordered by a judge who from the nature of his office cannot be sued and the validity of whose judicial decisions cannot be questioned in *habeas corpus* proceedings. Hence in nearly all the cases involving complaints of unlawful detention by the executive authority the order of detention was produced to justify the act of the executive. In the instant case the respondent Minister has not only produced the order but also filed affidavits presumably following the English practice in similar cases. The question of onus will of course arise if the order is impugned on the grounds that it was not made in good faith. In such an event, of course, the onus of proving bad faith, which is a question of fact, will be on the party so alleging. Reading article 5(2) of the Constitution as I do, it would appear that it merely imposes on the High Court a duty to inquire into the legality or otherwise of a detention. It also gives the High Court the power to release the person detained if satisfied that his detention is unlawful. The word "unless" means that it does not have the power of release if satisfied that the detention is lawful. With respect, I do not think there is anything in the point raised.

The appellant's complaint in the court below and here has been directed mainly against the validity of the order of detention which necessarily involves the construction of section 8(1)(a) of the Internal Security Act, 1960 which is in these terms:—

"8(1) If the Yang di-Pertuan Agong is satisfied with respect to any person that, with a view to preventing that person from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of public order or essential services therein, it is necessary to do so, the Minister shall make an order —

(a) directing that such person be detained for any period not exceeding two years, or".

This provision in terms is substantially identical with the provision in rule 30(1)(b) of the Defence of India Rules which is as follows:—

"(1) the Central Government or the State Government, if it is satisfied with respect to any particular person that with a view to preventing him from acting in any manner prejudicial to the defence of India and civil defence, the public safety, the maintenance of public order India's relations with foreign powers, the maintenance of peaceful conditions in any part of India, the efficient conduct of military operations or the maintenance of supplies and services essential to the life of the community, it is necessary so to do, may make an order —

(a) . . . .;

(b) directing that he be detained."

Although article 149(1) of the Constitution provides guide lines to the manner in which certain provisions of the Internal Security Act are to be construed, I prefer to adopt the construction placed on rule 30(1)(b) by the Indian court in the *State of Bombay* v. *Atma Ram.* [1] Kania C.J. said:—

"If, therefore, the grounds on which it is stated that the Central Government or the State Government was satisfied are such as a rational human being can consider connected in some manner with the objects which were to be prevented from being attained, the question of satisfaction except on the ground of *mala fides* cannot be challenged in a court. . . . It is not for the court to sit in the place of the Central Government or the State Government and try to determine if it would have come to the same conclusion as the Central or the State Government."

Patanjali Sastri J. in the same case said at page 191 to the same effect:—

"These decisions clearly establish, what indeed is plain from the nature of the measure, that preventive detention is a form of precautionary police action, to be employed on the sole responsibility of the executive government whose discretion is final, no recourse being permitted to a court of law by way of review or justification of such action except on allegations of *mala fides* or irrational conduct."

Das J. also in the same case said at page 203:—

"It is true that at the time those decisions were given the Constitution had not come into force and there were no fundamental rights, but these well established principles were recognised and adopted by all members of this court in *Gopalan's* case [17] which came up for consideration after the Constitution had come into force. In that case it was held unanimously that under section 3 of the Preventive Detention Act, 1950, the satisfaction of the authority was purely subjective and could not, in the absence of proof of bad faith, be questioned at all"

The same rule of construction had earlier been adopted by the House of Lords in construing regulation 18B of the Defence (General) Regulations 1939. Regulation 18B in its original form was substantially similar to the provisions of section 8(1)(a) and the Indian provision in rule 30(1)(b). Referring to this earlier provision Lord Wright in *Liversidge* v. *Sir John Anderson* [12] said at page 271.—

"The clause was 'The Secretary of State, if satisfied with respect to any particular person that with a view to preventing him from acting in any manner prejudicial to the public safety or the defence of the realm it is necessary to do so may make an order.' It is, as I apprehend, not contested that under this earlier form of the regulation the matter was left to the discretion of the Secretary,".

At page 272 Lord Wright went on to say:—

"In my opinion, if it was ever intended to make so drastic a change in the whole scheme as to make the Home Secretary's grounds of belief examinable by a judge, it should and would have been enacted by express words. I attach little importance in this context to the question whether the words used are 'satisfied' or 'has reasonable cause to believe'."

Lord Macmillan in *Greene* v. *Secretary of State for Home Affairs* [3] construing regulation 18B in its present form said:—

"My Lords, in the case of *Liversidge* [12] in which your Lordships have to-day given judgment, the same broad issue was the subject of consideration and this House has decided that the interpretation which the appellant seeks to place on the language of the regulation is in law untenable . . . . They are equally applicable to the present case. The Secretary of State is not bound to disclose or to justify to any court the grounds on which he conceived himself to have reasonable cause to believe that the appellant was a person of hostile associations and that by reason thereof it was necessary to exercise control over him. The result, in my opinion, is that the production of the Secretary of State's order, the authenticity and good faith of which is in no way impugned, constitutes a complete and peremptory answer to the appellant's application. It justifies in law his detention in the absence of any relevant challenge of its validity, and there is no such challenge. It necessarily follows that the Secretary of State had no need to submit an affidavit."

Lord Wright also in *Greene's* case [3] said at page 305:—

"The lawfulness of the detention depends on what is the true construction of regulation 18B. I explained my opinion on that matter in *Liversidge's appeal*,[12] which your Lordships have just decided . . . . It is enough here to say that the regulation gives to the Secretary of State a plenary discretion to make a detention order against the appellant if he has in his own mind and according to his own judgment reasonable cause to believe that the appellant is a person of hostile associations and that by reason thereof it is necessary to exercise control over him. . . . The order relied on by the respondent is *ex facie* good and valid. Its authenticity is not disputed. It is not said that the appellant is not the person intended. The order itself justifies the detention."

Thus both in England and in India the relevant statutory provisions have been so construed that it is possible to say that except on the ground of *mala fide* an order of detention which on the face of it appears authentic is difficult, if not, impossible to impugn. Construing section 8(1)(a) in the way those statutory provisions were construed, I think the same can be said of the order of detention in the present case. Be that as it may, it appears that since 1957 certain Indian decisions have opened up new grounds for challenging the validity of the order of detention. Relying on these decisions the appellant argued that the detention order in this case was bad. In *Dwarka Das* v. *State of Jammu & Kashmir* [5] the order was held to be bad because some of the grounds on which it was based were found to be irrelevant. The court, however, was careful enough to point out thus:—

"In applying these principles, however, the court must be satisfied that the vague or irrelevant grounds are such as if excluded, might reasonably have affected the subjective satisfaction of the appropriate authority. It is not merely because some ground or reason of a comparatively unessential nature is defective that such an order based on the subjective satisfaction can be held to be invalid".

Another new ground is to be found in *Jagannath Misra* v. *State of Orissa*,[2] at p. 1142. There the court held that the order of detention was bad because the detaining authority had not properly directed its mind to the question of detention. The facts in the case were that there was a discrepancy between the order of detention and the affidavit of the minister as to the number of grounds on which the detention order was based. This discrepancy was held by the court to be evidence of casualness on the part of the detaining authority in the sense that it has not properly applied its mind to the question of detention. This is what the court said:—

"Such discrepancy between the grounds mentioned in the order and the grounds stated in the affidavit of the authority concerned can only show an amount of casualness in passing the order of detention against the provisions of section 44 of the Act. This casualness also shows that the mind of the authority concerned was really not applied to the question of detention of the petitioner in the present case. In this view of the matter we are of opinion that the petitioner is entitled to release as the order by which he was detained is no order under the rules for it was passed without the application of the mind of the authority concerned."

Earlier on in the judgment it was clearly stated that the court would approach the problem before it on the view it took of section 44 of the Indian Act. This is what the court said:—

"It seems to us therefore necessary where detention is made under the rules that the authority ordering detention should act with a full sense of responsibility keeping in mind on the one hand the interests of the country in the present emergency and on the other hand the importance of the liberty of the citizen in a democratic society. That this is so is also emphasised by section 44 of the Act which lays down that 'any authority or person acting in pursuance of this Act shall interfere with the ordinary avocations of life and the enjoyment of property as little as may be consonant with the purpose of ensuring the public safety and interest and the defence of India and civil defence.' In view of this specific provision in the Act it is incumbent upon the authority which is passing the order under rule 31(1)(b) of the rules taking away the liberty of a citizen of this country that it should act with due care and caution and see that the person detained is so detained on the grounds which justify the detention in the interest of the country. Further the proceedings in the matter of detention and the order of detention should show that it had acted with all due care and caution and with a sense of responsibility necessary when a citizen is deprived of his liberty without trial. We have, therefore, to see whether in the present case the authority concerned has acted in this manner or not. If it has not so acted and if it appears that it did not apply its mind properly before making the order of detention, the order in question would not be an order under the rules and the person detained would be entitled to release."

In *Ram Manohar* v. *State of Bihar*,[4] the order of detention was also held to be bad because the expression used by the magistrate in stating one of the grounds for detention was not the expression used in rule 30(1)(b). The magistrate used the words "maintenance of law and order" whereas the rule uses the words "maintenance of public order". If I understand the judgment correctly, it was stated therein that the expression used by the magistrate in stating the ground for detention could not be said to have brought the order within the rule. This is what Sarkar J. said at page 746:—

"The satisfaction of the Government which justifies the order under the rule is a subjective satisfaction. A court cannot enquire whether grounds existed which would have created that satisfaction on which alone the order could have been made in the mind of a reasonable person. If that is so — and that indeed is what the respondent State contends — it seems to me that when an order is on the face of it not in terms of the rule, a court cannot equally enter into an investigation whether the order of detention was in fact, that is to say, irrespective of what is stated in it, in terms of the rule. In other words, in such a case the State cannot be heard to say or prove that the order was in fact made, for example, to prevent acts prejudicial to public order which would bring it within the rule though the order does not say so. To allow that to be done would be to uphold a detention without a proper order."

In *Basu's* Commentary on the Constitution of India, Volume 2, 5th Edition, it seems to have been suggested that some of these new grounds I have mentioned, are grounds for saying that there has been *mala fide* exercise of power. At page 135 the following passage appears:—

"An order of detention is *mala fide* if it is made for a 'collateral' or 'ulterior' purpose, i.e. a purpose other than what the Legislature had in view in passing the law of preventive detention (i.e., prevention of acts prejudicial to the security of the State, maintenance of public order and so on). There is a *mala fide* exercise of the power if the grounds upon which the order is based are not proper or relevant grounds which would justify detention under the provisions of the law itself, or when it appears that the authority making the order did not apply his mind to it at all, or made it for a purpose other than that mentioned in the detention order."

The author was undoubtedly stating the law as he thought it to be the law in India having regard to those decisions which I have mentioned. But with respect, if each of the judgment in the cases referred to is to be examined carefully there is no mention of the word *mala fide* to justify the suggestion that the court in each case has considered the matter before it on the basis that the detention order was being challenged on the ground of *mala fide*. In my opinion, *mala fide* is accepted as a good ground for challenging the validity of order of detention because it suggests an abuse of power. Being a question of fact it has to be proved and in cases of this nature it is not always easy to prove it. Mr. Basu in his commentary in fact rightly observed "the trend of recent decisions shows that it is not likely that the detenu may succeed in many cases." The question is whether these new grounds which I have mentioned should be imported into this country. It is a difficult question to answer, but nevertheless one that must be answered. Speaking for myself, I prefer to adopt certain minority views expressed in some of the Indian cases which reject these new grounds as being inconsistent with the subjective theory. Quite apart from this I am of the view that an order of detention made under section 8(1)(a) of the Internal Security Act, 1960 is nothing but a written authority evidencing that power under that provision has been exercised. The provision does not prescribe the form in which the order should be made. In that context there is no statutory requirement that the recital should be stated in the order. If, as claimed by the appellant in the instant case, the recital is vague or that it is irrelevant to the objects of the detention, the most that can be said of it is that the Minister who signed the order has not clearly indicated what the real or relevant ground was. This, however, could be made the basis of an objection that the detaining authority has not performed its duty under article 151(1)(a) of the Constitution. But it certainly cannot be made the basis for impugning the validity of the order. It has to be remembered that in

section 8(1)(a) of the Act two functionaries are involved in the matter of preventive detention. While it is the function of the Yang di-Pertuan Agong or the Cabinet to be satisfied as to the necessity to detain a person for any of the purposes mentioned therein, the function of the Minister is only to make the order of detention. Under such a scheme it is good practice for the Minister to indicate why the order was made, Hence the recital in the order. In the case of *Atma Ram*,[1] the argument raised was somewhat similar to the argument raised in the present case. At page 182, Kania C.J. described it in these words:—

"On behalf of the respondent, it was argued that if the grounds of detention are vague or insufficiently clear there will result a failure to give him the earliest opportunity to make a representation against the order of detention and that defect in its turn must affect the satisfaction on which the order of detention was made. It was argued that just as a ground which is completely irrelevant, and therefore, in law is no ground at all, could not satisfy any rational person about the necessity for the order, a vague ground which is insufficient to enable the detenu to make a representation would similarly make the order of detention based on it, void. In our opinion, this argument is unsound."

It was put in different words by Das J. at page 201:—

"The argument shortly put, is that the implied requirement that the grounds must be such as will enable the detenu to make a representation also indicates the quality or attribute of the grounds on which the order of detention may be made. Whether the grounds satisfy the requirements of article 22(5) is not left to the subjective opinion of the authority which makes the order of detention but an objective test is indicated, namely, that the grounds must be such as will enable the detenu to make a representation which quite clearly makes the matter justiciable."

At page 202, Das J. went on to say:—

"The argument so formulated is attractive but on closer scrutiny will be found to be unsound, . . . It was held in many cases that in the absence of bad faith, and provided the grounds on which the authority founded its satisfaction had a reasonable relation or relevancy to the object which the legislation in question had in view, the satisfaction of the authority was purely subjective and could not be questioned in any court of law. The decision of the Federal Court in *Machindar Shivaji Mahar* v. *The King* [18] is one of such decisions. Vagueness of the grounds on which satisfaction of the authority is founded cannot be treated as on the same footing as the irrelevancy of the grounds, unless the vagueness be such as may, by itself, be cogent evidence in proof of bad faith. If the grounds are relevant to the objects of the legislation and if there is no proof of bad faith, then mere vagueness of the grounds cannot vitiate the satisfaction founded on them."

Somewhat similar argument was raised in *The King* v. *Secretary of State for Home Affairs, Ex parte Lees*.[11] It was rejected and the judgment in that case reads:—

"The order, therefore, follows strictly the language of the regulation. It is argued that the order is bad for duplicity in that the two allegations of membership of and activity in connection with the objects of the organisation are stated in the alternative. It is said that they afford separate grounds for the making of an order and that one or other or both of those grounds of belief should appear as the reason for making the order. In our opinion there is nothing in the point. The document in question is not a conviction nor an indictment nor even a charge. Grammatically, it may be perfectly correct to say that the Home Secretary had reasonable cause to believe that the applicant was either a member of or was active in the furtherance of the objects of the association so as to justify the making of the order. It might, with equal force, be urged that the words 'to have been or to be' render the order bad upon the face of it.

We find nothing in the statute or the regulations requiring that the order should be in any particular form and, in our judgement, the order is not invalid upon this ground."

For the reasons stated, I would reject the appellant's argument that the detention order was bad.

The appellant raised similar argument in respect of allegations of fact saying that they were vague, insufficient and irrelevant. For the reasons already stated it must equally be held to be unsound and must also be rejected.

Both in respect of grounds of detention and in respect of allegations of fact, it could have been argued that in the circumstances of this case there has been a breach of constitutional requirements set out in article 151(1)(a). If these have been argued, consideration will have to be given as to whether the continued detention of the appellant for a period exceeding three months was lawful in terms of article 151(1)(b) which provides:—

"(b) no citizen shall be detained under that law or ordinance for a period exceeding three months unless an advisory board constituted as mentioned in clause (2) has considered any representations made by him under paragraph (a) and made recommendations thereon to the Yang di-Pertuan Agong."

It may be observed that at the time when the appellant commenced proceedings before the High Court, he has been detained for about nine months and the question of his being detained for a period exceeding three months could, therefore, be a proper question to consider.

Unfortunately, no one has thought fit to argue the point as throughout these proceedings the argument was confined mainly to the question whether the order of detention was valid. In the absence of the argument which I have mentioned, it is not possible to say whether the continued detention of the appellant was lawful or otherwise.

It is necessary to say a few words whether the appellant has proved bad faith. In this connection all that he has stated in his affidavit was that allegations No. 8 and 11 are matters which could properly be proceeded with by way

of criminal prosecution in a court of law. The suggestion was that the decision not to proceed against him in a court of law was evidence of bad faith. I am not aware of any principle or authority which supports this view. At any rate I do not think the argument is sound. I would reject it. In the absence of anything else it cannot be said that the appellant has proved bad faith.

Lastly, there is also the appellant's affidavit in which he categorically denies each and every one of the allegations of fact and contends in each case that even if the allegation is true, it cannot constitute a threat to the past or future security of Malaysia. In this connection, I shall be content to say that in *habeas corpus* proceedings, such as this, the court is not concerned with the truthfulness or otherwise of the allegations because the question whether it is necessary that a person be detained under section 8(1)(a) of the Internal Security Act, 1960 is a matter for the personal or subjective satisfaction of the executive authority. Accordingly, no consideration can be given to the appellant's denial and no opinion need be expressed on his contentions.

I agree that this appeal should be dismissed.

Appeal dismissed.

Solicitors: *Ranjit, Thomas & Kula.*

LIM CHIN POH v. PUBLIC PROSECUTOR

[A.Cr.J. (Choor Singh J.) May 23, 1969]

[Singapore — Magistrate's Appeal No. 203 of 1969]

Road Traffic — Charge of driving at a speed and in a manner which was dangerous to the public — Onus on prosecution — Failure to prove ingredients of charge — Road Traffic Ordinance, 1961, s. 26(1) — Charge altered to causing death by negligent act — Penal Code, s. 304A.

Penal Code, s. 304A — Causing death by negligent act.

Criminal Law and Procedure — Trial — Interruptions by trial judge — Whether trial irregular.

The appellant was convicted on charge of driving at a speed and in a manner which was dangerous to the public an offence punishable under section 26(1) of the Road Traffic Ordinance, 1961 and was sentenced to one year's imprisonment. Counsel for the appellant criticised the manner in which the learned district judge conducted the trial of the appellant. His complaint was that by reason of the frequency and nature of the interruptions by the learned trial judge when the appellant was giving evidence, the appellant did not have a fair trial. It was alleged that the trial judge intervened on no less than fifteen occasions; that he cross-examined the appellant; that he made it known he was displeased with the appellant; and that he was so thoroughly annoyed with the appellant that he gave vent to his feelings by imposing a severe sentence. On appeal,

Held: (1) the evidence did not support a conviction under section 26(1) of the Road Traffic Ordinance, 1961, and the conviction should be altered to one under section 304A of the Penal Code. Sentence to a fine of $1,000 or six months imprisonment substituted;

(2) it is desirable that the district judges and magistrates should bear in mind that the first and most important thing for the administration of the criminal law is that it should appear that the accused is having a fair trial and that he should not be left with any sense of injustice and certainly not on the ground that the trial judge was prejudiced against him. Where the prosecution and the defence are both represented by counsel, as they were in this case, the trial judge should refrain from intervening unless it is absolutely necessary.

Per Curiam: The expression "driving in a manner which is dangerous to the public" indicates some dangerous act or manoeuvre on the part of the driver of a vehicle, e.g. overtaking a vehicle on the wrong side of it, or overtaking in the face of oncoming traffic, or overtaking when unable to see oncoming traffic, or crossing a junction against traffic light, and so on. There must be some positive act on the part of the driver which is dangerous having regard to all the circumstances.

Case referred to:—

(1) *R.* v. *Evans* (1962), 47 Cr. App.R. 62; [1963] 1 Q.B. 412; [1962] 3 W.L.R. 1451; [1962] 3 All E.R. 1086.

MAGISTRATE'S APPEAL.

R.E. Redrup for the appellant.

Tan Teow Yeow (Deputy Public Prosecutor) for the Public Prosecutor.

Choor Singh J.: The appellant Lim Chin Poh was convicted by a district court of an offence under section 26(1) of the Road Traffic Ordinance, 1961 and sentenced to one year's imprisonment. He now appeals against his conviction and sentence.

Section 26(1) of the Ordinance reads as follows:—

"Any person who causes the death of another person by the driving of a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the road, shall be guilty of an offence under this Ordinance and shall be liable on conviction to imprisonment for a term not exceeding five years."

In my view there are three distinct offences under this section because the use of the word "or" is disjunctive:—

(1) causing death by driving a motor vehicle on the road recklessly;

(2) causing death by driving a motor vehicle on the road at a speed which is dangerous to the public etc.; and

(3) causing death by driving a motor vehicle on the road in a manner which is dangerous to the public, etc.